# RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

## Department of Agriculture and Markets

### PROPOSED RULE MAKING
### NO HEARING(S) SCHEDULED

**Firewood (all Hardwood Species) and Other Host Tree Materials Susceptible to the Asian Long Horned Beetle**

**I.D. No.** AAM-47-13-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** Amendment of section 139.2 of Title 1 NYCRR.

***Statutory authority:*** Agriculture and Markets Law, sections 18, 164 and 167

***Subject:*** Firewood (all hardwood species) and other host tree materials susceptible to the Asian Long Horned Beetle.

***Purpose:*** To lift the Asian Long Horned Beetle quarantine in Manhattan and on Staten Island.

***Text of proposed rule:*** Subdivisions (a) and (c) of section 139.2 of 1 NYCRR are repealed and a new subdivision (a) of section 139.2 of 1 NYCRR is added to read as follows:

*Section 139.2 Regulated area.*

*(a) That area in the boroughs of Brooklyn and Queens in the City of New York that is bounded by a line beginning at the point where Robert F. Kennedy/Tri-borough Bridge intersects with the Queens shoreline; then north and east along the Queens shoreline to its intersection with the City of New York/Nassau County line; then southeast along the City of New York/Nassau County line to its intersection with the Grand Central Parkway; then west on the Grand Central Parkway to the Jackie Robinson Parkway; then west on the Jackie Robinson Parkway to Park Lane; then south on Park Lane to Park Lane South; then south and west on Park Lane South to 112th Street; then south on 112th Street to Atlantic Avenue; then west on Atlantic Avenue to 106th Street; then south on 106th Street to Liberty Avenue; then west on Liberty Avenue to Euclid Avenue; then south on Euclid Avenue to Linden Boulevard; then west on Linden Boulevard to Canton Avenue; then west on Canton Avenue to the Prospect Expressway; then north and west on the Prospect Expressway to the Gowanus Expressway; then north and west on the Gowanus Expressway to Hamilton Avenue and the Hugh L. Carey/Brooklyn Battery Tunnel; then north on Hamilton Avenue and the Hugh L. Carey/Brooklyn Battery Tunnel; then north along the Brooklyn and Queens shoreline of the East River to the point of beginning.*

***Text of proposed rule and any required statements and analyses may be obtained from:*** Margaret Kelly, Interim Director, Division of Plant Industry, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-2087, email: margaret.kelly@agriculture.ny.gov

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Regulatory Impact Statement***

1. Statutory Authority:

Section 18 of Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such orders, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative Objectives:

The Asian Long Horned Beetle (ALB) quarantines accord with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that they help to prevent the spread within the State of an injurious insect, the Asian Long Horned Beetle. Lifting the quarantines in Manhattan and Staten Island is consistent with the objectives of the statute because ALB has been eradicated in these boroughs, making it unnecessary to maintain the quarantines.

3. Need and Benefits:

The Asian Long Horned Beetle, Anoplophora glabripennis, an insect species non-indigenous to the United States, can cause serious damage to healthy trees by boring into their heartwood and eventually killing them. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Host hardwood materials at risk to attack and infestation include species of the following: Acer (Maple); Aesculus (Horse Chestnut); Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); Ulmus (Elm); Celtis (Hackberry), Fraxinus (Ash); Cercidiphyllum japonicum (Katsura); Platanus (Plane tree, Sycamore) and Sorbus (Mountain Ash).

The pest was initially detected in the Greenpoint section of Brooklyn in August of 1996. Subsequent survey activities delineated other locations in Brooklyn as well as locations in and about Amityville, the Town of Islip, Queens, Manhattan and Staten Island. As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of those areas in which the Asian Long

Horned Beetle had been observed. The quarantine was lifted in Islip in 2011 due to the eradication of ALB in this area. The boundaries of current quarantine areas are described in NYCRR section 139.2.

There have been three comprehensive surveys in Manhattan since November 2005 and two comprehensive surveys and a tree climbing survey in Staten Island since January 2009. ALB has not been detected during these surveys. These areas, therefore, have been determined to be ALB-free, eliminating the need for further quarantine. The lifting of the quarantines in Manhattan and Staten Island will ease regulatory burdens on nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors as well as private citizens within those areas, by allowing them to move Asian Long Horned Beetle host materials from those areas, without the need for compliance agreements or phytosanitary certificates and incurring expenses incident thereto. The lifting of the quarantines will ease burdens on regulated parties without compromising plant health, thereby promoting the general welfare. It will also conform the State quarantines to the federal quarantines, which were lifted in both boroughs on May 14, 2013.

4. Costs:

(a) Costs to the State Government: None. The Department may realize cost savings by no longer issuing phytosanitary certificates or compliance agreements.

(b) Costs to local government: None. The amendment will not result in costs to local governments. In fact, there will be lower costs for Manhattan and Staten Island, because they will no longer incur expenses incident to obtaining phytosanitary certificates or compliance agreements in order to move host materials.

(c) Costs to private regulated parties: None. The proposed rule will not result in costs to private regulated parties. In fact, there will be lower costs to private regulated parties, because they will no longer incur expenses incident to obtaining phytosanitary certificates or compliance agreements in order to move host materials.

(d) Costs to the regulatory agency:

(i) The initial expenses: None.

(ii) The ongoing expenses: None. The Department may realize cost savings by no longer issuing phytosanitary certificates or compliance agreements.

5. Local Government Mandate:

None. In fact, Manhattan and Staten Island will no longer need to engage in the disposal of host materials.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

The only alternative considered was to leave the quarantines in place in Manhattan and Staten Island. The alternative was rejected, because leaving the Asian Long Horned Beetle quarantines in place where the pest has not been observed since November 2005 in Manhattan and since January 2009 on Staten Island, is inconsistent with existing scientific protocols and imposes an unnecessary burden on regulated parties. In light of this, the only viable alternative is to lift the quarantines in Manhattan and Staten Island. Additionally, lifting the quarantines will align the State quarantines with the federal quarantines, which were lifted in both areas on May 14, 2013.

9. Federal Standards:

The United States Department of Agriculture had parallel Asian Long Horned Beetle quarantines in the areas of Manhattan and Staten Island, which were lifted on May 14, 2013.

10. Compliance Schedule:

It is anticipated that regulated parties would be able to comply with the rule immediately.

***Regulatory Flexibility Analysis***

1. Effect of rule:

There are approximately 384 nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within New York and Richmond counties that are potentially affected by the quarantines which would be lifted under this rule. Most of these entities are small businesses. Since the rule will lift the Asian Long Horned Beetle quarantines, regulated businesses in those areas will be able to freely move regulated materials without the need for compliance agreements and phytosanitary certificates and without incurring costs incident thereto.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

a. Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None.

b. Annual costs for continuing compliance with the proposed rule: None. In fact, there will be lower costs to regulated parties, since they will no longer incur expenses incident to obtaining phytosanitary certificates or compliance agreements in order to move host materials.

5. Economic and technological feasibility:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. The basis for this determination is that by lifting the Asian Long Horned Beetle quarantines, the rule actually eliminates a regulatory burden on small business and local governments in Manhattan and Staten Island.

6. Minimizing adverse impact:

Since the rule will lift the Asian Long Horned Beetle quarantines in Manhattan and Staten Island, the rule minimizes adverse impact because regulated parties in these areas will no longer be subject to the quarantines and the requirements incident thereto.

7. Small business and local government participation:

None.

***Rural Area Flexibility Analysis***

The rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based upon the fact that the quarantine areas to which the amendments apply are not situated in "rural areas," as defined in section 481(7) of the Executive Law.

***Job Impact Statement***

It is anticipated that the rule will not have a substantial adverse impact on jobs and employment opportunities. In fact, by easing regulatory burdens and costs incident thereto, the lifting of the Asian Long Horned Beetle quarantines in Manhattan and Staten Island may have a positive impact on jobs within those areas.

# Department of Audit and Control

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

**Interest Rates for NYSLERS and NYSPFRS**

**I.D. No.** AAC-47-13-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** This is a consensus rule making to amend sections 300.1, 300.2 and 300.4 of Title 2 NYCRR.

***Statutory authority:*** Retirement and Social Security Law, sections 11 and 311

***Subject:*** Interest rates for NYSLERS and NYSPFRS.

***Purpose:*** To update regulations relating to certain rates of interest.

***Text of proposed rule:*** Section 300.1. Regular interest; and rate of estimated future investment earnings.

(a) As used in the Retirement and Social Security Law, the term regular interest shall mean four per centum per annum or the rate of interest recommended by the Retirement System actuary and promulgated by the Comptroller which is in effect on the date of retirement, as provided in paragraph (4) of subdivision (b) of section 11 of the Retirement and Social Security Law, if higher than four per centum. Effective April 1, 1989, the Comptroller has promulgated the regular interest rate as 7 per centum per annum.

(b) Effective April 1, [1996] *2010* the rate of estimated earnings for the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System shall be *7.5* [8 1/2] per centum per annum.

(c) The rates herein fixed shall remain in effect until revised by further order duly promulgated.

Section 300.2. Rate of special interest [for 1991 - 1992 fiscal year].

The rate of special interest [for the fiscal year commencing April 1, 1991 and ending March 31, 1992,] to be credited to the individual annuity savings accounts of persons who are members of the New York State and Local Employees' Retirement System or New York State and Local Police and Fire Retirement System as of the close of [said] *each* fiscal year, is as follows:

(a) for members earning regular interest of three per centum, pursuant to section 2(26)(b) of the Retirement and Social Security Law, two per centum;

(b) for members earning regular interest of four per centum, pursuant to section 2(26)(b) of the Retirement and Social Security Law, one per centum.

Section 300.4. Interest rate on loans to *Tier 1 & 2* members.

(a) The rate of interest to be charged on all loans granted on and after April 1, 1970 pursuant to sections 50 and 350 of the Retirement and Social Security Law shall be five per centum per annum.

(b) This rate of interest shall also apply, from April 1, 1970, to unpaid balances of loans outstanding on such date.

(c) The rate of interest fixed herein shall remain in effect until revised by further order.

***Text of proposed rule and any required statements and analyses may be obtained from:*** Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Consensus Rule Making Determination***

This is a consensus rulemaking proposed for the purpose of conforming the existing text of Section 300.1 of Title 2 of NYCRR to the most recently established rate of estimated future investment earnings; for the purpose of making permanent the rate of special interest to be credited to individual annuity savings accounts of members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System as established by Section 300.2 of Title 2 of NYCRR; and for the purpose of making technical amendments to the interest rate on loans for Tier 1 and Tier 2 members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System as established by Section 300.4 of Title 2 of NYCRR. These technical amendments relate to rates of interest, the rate of special interest and the interest rate on loans and it has been determined that no person is likely to object to the adoption of the rule as written.

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

### Insurance Premiums on Loans Taken by Members of the NYSLERS and NYSLPFRS

**I.D. No.** AAC-47-13-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** This is a consensus rule making to amend Part 308 of Title 2 NYCRR.

***Statutory authority:*** Retirement and Social Security Law, sections 11, 50, 311 and 350

***Subject:*** Insurance premiums on loans taken by members of the NYSLERS and NYSLPFRS.

***Purpose:*** To update the amount of the insurance premiums on loans taken by members of the NYSLERS and NYSLPFRS.

***Text of proposed rule:*** Title:

Loans to [Tier 1 and Tier 2] Members.

Regulation Text:

308.1 Applications for loans.

Applications for loans shall be executed by members on forms prepared by the retirement system. No application for a loan *made by a member of Tier 1 or Tier 2* shall be accepted by the retirement system if the member has made application for and received a loan within the previous three months.

308.2 Computation of premiums.

(a) On or after April 1, [1992] *2010*, and until further directed by the Comptroller as provided by sections 50(g)(2) and 350(g)(2) of the Retirement and Social Security Law, the premium which shall be charged to members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System for loan insurance shall be computed as hereinafter stated.

(1) Said premiums shall be charged for, and shall apply to, all loans outstanding at the beginning of each month, and shall further apply to, and be charged for, any new or additional loans made during any month.

(2) With reference to any outstanding loans, the premium charge for said month will be computed on the first day of said month.

(3) With reference to new and additional loans made on or before the 16th day of any month, a premium charge for that month shall be computed as of the date of issuance of the loan check.

(4) The premiums charged shall be based on the member's attained age at the time the charge is computed in accordance with the following schedule of rates:

| Attained age group at the time of premium charge | premium rate per annum | | | |
|---|---|---|---|---|
| | NYSLERS (Tiers 1 and 2) | *NYSLPFRS (Tiers 1 and 2)* | NYSLERS *&* *NYSLPFRS* Tiers (3[and 4]-*6*) | [NYSLPFRS] |
| 15 years or older but less than 40 years | .012% | *.012%* | .*096*[0120]% | [.00012%] |
| 40 years or older but less than 50 years | .*024*[12]% | *.012%* | *.192*[00240]% | [.00012%] |
| 50 years or older but less than 70 years | .024% | *.012%* | .[00]396% | [.00024%] |

(b) The New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System shall maintain a continuous study of such loan insurance and keep the Comptroller advised of any significant changes which might require revision of the above premium scale.

(c) The Comptroller may make any changes in the above premium scale, at the beginning of any fiscal year, when such action is indicated by said continuous study.

***Text of proposed rule and any required statements and analyses may be obtained from:*** Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Consensus Rule Making Determination***

This is a consensus rulemaking proposed for the purpose of updating the existing text of Section 308.1 of Title 2 of NYCRR to reflect the premium for loan insurance charged to members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System. These technical amendments relate to premiums for loan insurance and it has been determined that no person is likely to object to the adoption of the rule as written.

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

### Disability Retirement for Members Under Article 14 of the Retirement and Social Security Law

**I.D. No.** AAC-47-13-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** This is a consensus rule making to amend Part 336 of Title 2 NYCRR.

***Statutory authority:*** Retirement and Social Security Law, sections 102, 507, 507-a, 517-c and 519

***Subject:*** Disability Retirement for Members under Article 14 of the Retirement and Social Security Law.

***Purpose:*** To update the dates of availability for Disability Retirement under Article 14 of the Retirement and Social Security Law.

***Text of proposed rule:*** PART 336. DISABILITY RETIREMENT FOR MEMBERS [OF THE NEW YORK STATE AND LOCAL EMPLOY-

EES' RETIREMENT SYSTEM] UNDER ARTICLE 14 OF THE RETIREMENT AND SOCIAL SECURITY LAW

Section 336.1. Background.

(a) The Supreme Court, Albany County, has determined that ordinary disability and accidental disability benefits provided under sections 506 and 507, respectively, of the Retirement and Social Security Law, shall remain available to individuals who joined or rejoined the New York State Employees' Retirement System on or between July 27, 1976 and August 31, 1983, and who otherwise meet the eligibility requirements provided in those sections. [This]*These benefits shall also* [apply]*be available to individuals who joined or rejoined the New York State Police & Fire Retirement System on or between July 1, 2009 and January 9, 2010, and who have not elected to be covered by the provisions of Article 22 by electing such retirement coverage within the time period as specified in Section 1205 of the Retirement and Social Security Law, and who otherwise meet the eligibility requirements provided in those sections.*

(b) Section 507-a of the Retirement and Social Security Law (chapter 452 of the Laws of 1983), which became effective September 1, 1983, is the sole disability retirement benefit applicable to members of the uniformed personnel in the institutions under the jurisdiction of the Department of Correctional Services of New York State, as defined in subdivision (h) of section 89 of the Retirement and Social Security Law, who joined or rejoin the New York State Employees' Retirement System, on or subsequent to September 1, 1983. Section 507-a also applies to disability retirements of such members of the uniformed personnel who join or rejoin the New York State Employees' Retirement System on or subsequent to July 27, 1976.

(c) Section 519 of the Retirement and Social Security Law authorizes the Comptroller to promulgate regulations pertaining to the implementation of article 14 of the Retirement and Social Security Law. Subdivision (c) of section 507-a authorizes the Comptroller, as head of the New York State Employees' Retirement System, to adopt appropriate procedures for making determinations regarding applications for disability retirement filed by members of that system who are governed by the provisions of article 14 of the Retirement and Social Security Law.

(d) This Part shall set forth the procedures pertaining to disability retirement pursuant to sections 506, 507 and 507-a of the Retirement and Social Security Law.

***Text of proposed rule and any required statements and analyses may be obtained from:*** Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Consensus Rule Making Determination***

This is a consensus rulemaking proposed for the purpose of making technical amendments to the text of Section 336.1 of Title 2 of NYCRR relating to disability retirement for members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System under Article 14 of the Retirement and Social Security Law. These technical amendments relate to the dates of applicability for such disability retirement and it has been determined that no person is likely to object to the adoption of the rule as written.

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

### Membership Contributions and Withdrawls

**I.D. No.** AAC-47-13-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** This is a consensus rule making to add Part 381 to Title 2 NYCRR.

***Statutory authority:*** Retirement and Social Security Law, sections 11, 311 and 1204

***Subject:*** Membership contributions and withdrawls.

***Purpose:*** Establish rules for contributions and withdrawls for members covered by Article 22 of the Retirement and Social Security Law.

***Text of proposed rule:*** *PART 381. ARTICLE 22 –MEMBERSHIP CONTRIBUTIONS AND WITHDRAWALS*

*§ 381.1 Background and determination.*

*Section 1204 of the Retirement and Social Security Law, as added by section 1 of Chapter 504 of the Laws of 2009, directs and authorizes the State Comptroller to promulgate regulations necessary with respect to deductions of contributions from the wages of members who are covered by the provisions of Article 22 of the law, and maintenance of any special fund(s) with respect to amounts contributed. This part is being promulgated to set forth by Regulation the provisions of Article 22 with respect to members of the New York State and Local Police and Fire Retirement System.*

*§ 381.2 Member contributions.*

*Members of the New York State and Local Police and Fire Retirement System who are covered by the provisions of Article 22 of the Retirement and Social Security Law shall contribute a percentage of their annual wages to the Retirement System as set forth in Section 1204. Such contributions shall not be required after accruing the maximum service credit allowed under the plan in which they are enrolled.*

*Contributions made pursuant to Article 22 of the Retirement and Social Security Law shall be considered CO-ESC contributions, as defined by Part 326 of these regulations. In no event shall these contributions provide for a pension increase or annuity.*

*§ 381.3 Withdrawal and refund of CO-ESC contributions.*

*In the event of termination of employment other than as a result of transfer to another public employer, a member participating in the retirement plan provided for in Article 22 of the Retirement and Social Security Law, who is not vested or entitled to any other benefit under Article 22, may withdraw his CO-ESC contributions and terminate his membership in the New York State and Local Police and Fire Retirement System by filing a form prescribed by the Retirement System for this purpose. Such a request may be made after the member has been separated from service for at least 15 days. The Retirement system shall thereupon refund the CO-ESC contributions.*

*§ 381.4 Refund of member's contributions on death of the member.*

*In the event of termination of membership with New York State and Local Police and Fire Retirement System by the death of a member participating in the retirement plan provided for in Article 22 of the Retirement and Social Security Law, where no application for death benefits has been approved by the Comptroller on account of such member's death and where there are no individuals eligible to receive death benefits on account of such member's death under the provisions of Article 22 of the Retirement and Social Security Law and the regulations promulgated thereunder, accumulated contributions shall be refunded to the beneficiary duly designated by the member on a form prescribed by and filed with the Retirement System for this purpose. In the absence of such designation of beneficiary, any accumulated contributions made by the deceased member shall be refunded to his estate. Such duly designated beneficiary or, in the absence thereof, the estate's legal representative, must file a written request for such a refund with the Retirement System on a form prescribed by the Retirement System for this purpose. The Retirement System shall thereupon refund the accumulated contributions.*

*§ 381.5 Interest on refunded accumulated contributions.*

*The accumulated contributions withdrawn as provided for by sections 381.3 and 381.4 of this Part shall be refunded with interest at the rate of five percent per annum.*

*§ 381.6 Restoration of credit for previous service.*

*Membership in the New York State and Local Police and Fire Retirement System shall cease upon withdrawal of contributions pursuant to these regulations. A former member who thereafter returns to public service shall not receive any credit for previous service to which such withdrawn and refunded contributions applied unless and until such former member applies for such credit and repays the entire amount withdrawn and refunded, together with interest through the date of repayment at the rate of five percent per annum.*

***Text of proposed rule and any required statements and analyses may be obtained from:*** Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Consensus Rule Making Determination***

This is a consensus rulemaking proposed for the purpose of adding a new Part 381 to Title 2 of NYCRR relating to membership contributions and withdrawls by members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System covered by Article 22 of the Retirement and Social Security Law. These amendments are being promulgated to comply with the provisions of Section 1204 of the Retirement and Social Security Law, as added by section 1 of Chapter 504 of the Laws of 2009 and it has been determined that no person is likely to object to the adoption of the rule as written.

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

**Mortality and Service Tables for Valuation Purposes**

**I.D. No.** AAC-47-13-00015-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** This is a consensus rule making to amend section 310.1 and Appendix 10 of Title 2 NYCRR.

***Statutory authority:*** Retirement and Social Security Law, sections 11(g), 311, 519 and 614

***Subject:*** Mortality and service tables for valuation purposes.

***Purpose:*** To update the mortality and service tables used for valuation purposes.

***Substance of proposed rule:*** Summary Section 310

It is necessary to intermittently update the regulation relating to, as well as the mortality and service tables used for, actuarial valuation of all the liabilities of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System. The most recent update of values was in the year 2010 and therefore the regulation and tables need to conform to such data. Such updates are necessary as life expectancies and other contributing factors change over time.

Summary of Update to Appendix 10

It is necessary to intermittently update the mortality and service tables used for actuarial valuation of all the liabilities of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System. Such updates are necessary as life expectancies and other contributing factors change over time.

***Text of proposed rule and any required statements and analyses may be obtained from:*** Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12203, (518) 473-4146, email: jelacqua@osc.state.ny.us

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Consensus Rule Making Determination***

This is a consensus rulemaking proposed for the purpose of making technical amendments to the text of Section 310.1 of Title 2 of NYCRR relating to the mortality and service tables used for actuarial valuation of all liabilities of the members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System. These technical amendments relate to the mortality and service tables and it has been determined that no person is likely to object to the adoption of the rule as written.

# Department of Environmental Conservation

## EMERGENCY/PROPOSED
## RULE MAKING
## NO HEARING(S) SCHEDULED

**Sanitary Condition of Shellfish Lands**

**I.D. No.** ENV-47-13-00002-EP

**Filing No.** 1082

**Filing Date:** 2013-11-01

**Effective Date:** 2013-11-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

***Proposed Action:*** Amendment of Part 41 of Title 6 NYCRR.

***Statutory authority:*** Environmental Conservation Law, sections 13-0307 and 13-0319

***Finding of necessity for emergency rule:*** Preservation of public health.

***Specific reasons underlying the finding of necessity:*** Shellfish are filter feeders that consume plankton, other minute organisms and particulate matter found in the water column. They are capable of accumulating pathogenic bacteria, viruses and toxic substances within their bodies. Consequently, shellfish harvested from areas that do not meet the bacteriological standards for certification have an increased potential to cause illness in shellfish consumers. Closures of shellfish lands that do not meet the water quality standards provide essential protection of public health. Recent evaluations of current water quality data indicate that the bacteriological standards are not met in the affected areas and an increased risk of illness exists for shellfish consumers. The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not prevent the harvest and consumption of potentially harmful shellfish in a timely manner.

***Subject:*** Sanitary Condition of Shellfish Lands.

***Purpose:*** To reclassify underwater lands to prohibit the harvest of shellfish.

***Substance of emergency/proposed rule (Full text is posted at the following State website:www.dec.ny.gov):*** The New York State Department of Environmental Conservation proposes to amend 6 NYCRR Part 41 to classify as uncertified (closed to shellfish harvest) either year round or seasonally the following shellfish lands in the towns of Hempstead, Islip, Brookhaven, Southampton, East Hampton and Southold. The amendment is described below:

6 NYCRR 41.2(b)(1)(ii): In Hempstead Bay in the Town of Hempstead, approximately 900 acres shall be reclassified as certified (open) and 1,089 acres will be reclassified as uncertified (closed) for the harvest of shellfish year-round.

Subparagraph 41.3(b)(2)(i) and Subparagraph 41.3(b)(3)(i): In Nicoll Bay, in the Towns of Islip and Brookhaven, approximately 1,204 acres shall be designated as uncertified for the harvest of shellfish year-round.

Subparagraph 41.3(b)(3)(v): In Moriches Bay, in the Town of Brookhaven, approximately 17 acres shall be designated as seasonally uncertified for the harvest of shellfish during the period May 15 to September 30.

Subparagraph 41.3(b)(4)(iii): In Shinnecock Bay (Daves Creek), in the Town of Southampton, approximately 10 acres shall be designated as uncertified to the harvest of shellfish year-round.

Subparagraph 41.3(b)(4)(xv): In Cold Spring Pond, in the Town of Southampton, approximately 15 acres shall be designated as seasonally uncertified to the harvest of shellfish during the period May 1 to November 30.

Subparagraph 41.3(b)(5)(iv): In Three Mile Harbor (Hands Creek), in the Town of East Hampton, approximately 15 acres shall be designated as uncertified to the harvest of shellfish year-round.

Subparagraph 41.3(b)(5)(x): In Acabonac Harbor, in the Town of East Hampton, approximately 14 acres shall be designated as seasonally uncertified to the harvest of shellfish during the period May 1 through November 30.

Subparagraph 41.3(b)(7)(ix): In Gull Pond, in the Town of Southold, approximately 3 acres shall be designated as uncertified to the harvest of shellfish.

Subparagraph 41.3(b)(7)(xi): In Deep Hole Creek (Great Peconic Bay), in the Town of Southold, approximately 75 acres shall be designated as seasonally uncertified to the harvest of shellfish during the period May 1 through November 30.

Subparagraph 41.3(b)(9)(iv), 41.3(b)(10)(i) and 41.3(b)(10)(ii): In the Towns of Brookhaven and Smithtown (north shore), in Stony Brook Harbor, approximately 14 acres shall be designated as uncertified year-round and approximately 30 acres shall be designated seasonally uncertified from May 1 through October 31. In Smithtown Bay, approximately 195 acres shall be designated as seasonally uncertified from May 1 through October 31.

Subparagraph 41.3(b)(11)(vi): In Lloyd Harbor, in the Town of Huntington, approximately 170 acres shall be designated as seasonally uncertified from May 1 through October 31.

***This notice is intended:*** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire January 29, 2014.

***Text of rule and any required statements and analyses may be obtained from:*** Gina M. Fanelli, NYS Department of Environmental Conservation, 205 N. Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0482, email: gmfanell@gw.dec.state.ny.us

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Additional matter required by statute:*** Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the Department.

***Consolidated Regulatory Impact Statement***

1. Statutory authority:

The statutory authority for designating shellfish lands as certified or

uncertified is given in Environmental Conservation Law (ECL) section 13-0307. Subdivision 1 of section 13-0307 of the ECL requires the Department of Environmental Conservation (the department) to periodically conduct examinations of all shellfish lands within the marine district to ascertain the sanitary condition of these areas. Subdivision 2 of this section requires the department to certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified.

The statutory authority for promulgating regulations with respect to the harvest of shellfish is given in ECL section 13-0319.

2. Legislative objectives:

The legislative objectives are to ensure that shellfish lands are appropriately classified as either certified or uncertified and to protect public health by preventing the harvest and consumption of shellfish from lands that do not meet the standards for a certified shellfish land.

3. Needs and benefits:

Regulations that designate shellfish lands as certified are needed to allow the harvest of shellfish from lands that meet the sanitary criteria for a certified area. Shellfish are a valuable state resource and, where possible, should be available for commercial and recreational harvest. The classification of previously uncertified shellfish lands as certified may provide additional sources of income for commercial shellfish diggers by increasing the amount of areas available for harvest. Recreational harvesters also benefit by having increased harvest opportunities and the ability to make use of a natural resource readily available to the public. The direct harvest of shellfish for use as food is allowed fromcertified shellfish lands only.

Regulations that designate shellfish lands as uncertified are needed to prevent the harvest and consumption of shellfish from lands that do not meet the sanitary criteria for a certified area. Shellfish harvested from uncertified shellfish lands have a greater potential to cause human illness due to the possible presence of pathogenic bacteria or viruses. These pathogens may cause the transmission of infectious disease to the shellfish consumer.

These regulations also protect the shellfish industry. Seafood wholesalers, retailers, and restaurants are adversely affected by public reaction to instances of shellfish related illness. By prohibiting the harvest of shellfish from lands that fail to meet the sanitary criteria, these regulations can ensure that only wholesome shellfish are allowed to be sold to the shellfish consumer.

4. Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non capital expenses, in order to comply with these proposed regulations.

The department cannot provide an estimate of potential lost income to shellfish harvesters when areas are classified as uncertified, due to a number of variables that are associated with commercial shellfish harvesting; nor can the potential benefits be estimated when areas are reopened. Those variables are listed in the following three paragraphs.

As of September 17, 2013, the department had issued 1,725 New York State shellfish digger's permits. However, the actual number of those individuals who harvest shellfish commercially full time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish digger's permits for that type of recreational harvest is unknown. The department's records do not differentiate between full time and part-time commercial or recreational shellfish harvesters.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the department's proposed regulatory action. When a particular area is classified as uncertified (closed to shellfish harvesting), harvesters can shift their efforts to other certified areas.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the department. Without this information, the department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The department's actions to classify areas as certified or uncertified are not dependent on the shellfish resources in a particular area. They are based solely on the results of water quality analyses, the need to protect public health and statutory requirements.

There is no cost to the department. Administration and enforcement of the proposed amendment are covered by existing programs.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

No new paperwork is required.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

There are no acceptable alternatives. ECL section 13-0307 stipulates that when the department has determined that a shellfish land meets the sanitary criteria for certified shellfish lands, the department must designate the land as certified and open to shellfish harvesting. All other shellfish lands must be designated as uncertified and closed to shellfish harvesting. These actions are necessary to protect public health.

9. Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among members. NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary; each state adopts its own regulations to implement a shellfish sanitation program consistent with the NSSP. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non conformity with NSSP guidelines can result in sanctions being taken by FDA, including removal of a state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non conforming state's shellfish products from interstate commerce.

10. Compliance schedule:

Compliance with any new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, record keeping or any action by the regulated parties. Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes in the classification of shellfish lands by mail either prior to, or concurrent with, the adoption of new regulations. Therefore, immediate compliance can be readily achieved.

***Consolidated Regulatory Flexibility Analysis***

1. Effect on small business and local government:

As of September 17, 2013 there were 1,725 licensed shellfish diggers in New York State. The numbers of permits issued for areas in the State are as follows: New York City, 44; Westchester, 4; Town of Hempstead, 94; Town of Oyster Bay, 115; Town of North Hempstead, 5; Town of Babylon, 53; Town of Islip, 132; Town of Brookhaven, 290; Town of Southampton, 169; Town of East Hampton, 265; Town of Shelter Island, 39; Town of Southold, 235; Town of Riverhead, 61; Town of Smithtown, 33; Town of Huntington, 165; other, 21.

Any change in the designation of shellfish lands may have an effect on shellfish diggers. Each time shellfish lands or portions of shellfish lands are designated as uncertified, there may be some loss of income for shellfish diggers who are harvesting shellfish from the lands to be closed. This loss may be determined by the acreage to be closed, the type of closure (whether year-round or seasonal), the species of shellfish present in the area, the area's productivity, and the market value of the shellfish resource in the particular area.

When uncertified shellfish lands are found to meet the sanitary criteria for a certified shellfish land, and are then designated as certified, there is also an effect on shellfish diggers. More shellfish lands are made available for the harvest of shellfish, and there is a potential for an increase in income for shellfish diggers. Again, the effect of the re opening of a harvesting area is determined by the shellfish species present, the area's productivity, and the market value of the shellfish resource in the area.

Local governments on Long Island exercise management authority and share law enforcement responsibility for shellfish with the State and the counties of Nassau and Suffolk. These include the towns of Hempstead, North Hempstead and Oyster Bay in Nassau County and the towns of Babylon, Islip, Brookhaven, Southampton, East Hampton, Southold, Shelter Island, Riverhead, Smithtown and Huntington in Suffolk County. Changes in the classification of shellfish lands impose no additional requirements on local governments above what level of management and enforcement that they normally undertake; therefore, there should be no effect on local governments.

2. Compliance requirements:

There are no reporting or recordkeeping requirements for small businesses or local governments.

3. Professional services:

Small businesses and local governments will not require any professional services to comply with proposed rules.

4. Compliance costs:

There are no capital costs which will be incurred by small businesses or local governments.

5. Economic and technological feasibility:

There are no reporting, recordkeeping, or affirmative actions that small businesses or local governments must undertake to comply with the proposed rules. Similarly, small businesses and local governments will not have to retain any professional services or incur any capital costs to comply with such rules. As a result, it should be economically and technically feasible for small businesses and local governments to comply with rules of this type.

6. Minimizing adverse impact:

The designation of shellfish lands as uncertified may have an adverse impact on commercial shellfish diggers. All diggers in the towns affected by proposed closures will be notified by mail of the designation of shellfish lands as uncertified prior to the date the closures go into effect. Shellfish lands which fail to meet the sanitary criteria during specified times of the year will be designated as uncertified only during those times. At other times, shellfish may be harvested from those lands (seasonally certified). To further minimize any adverse effects of proposed closures, towns may request that uncertified shellfish lands be considered for conditionally certified designation or for a shellfish transplant project. Shellfish diggers will also be able to shift harvesting effort to nearby certified shellfish lands. There should be no significant adverse impact on local governments from most changes in the classification of shellfish lands.

7. Small business and local government participation:

Impending shellfish closures are discussed at regularly scheduled Shellfish Advisory Committee meetings. This committee, organized by the department, is comprised of representatives of local baymen's associations, shellfish shippers and local town officials. Through their representatives, shellfish harvesters and shippers can express their opinions and give recommendations to the department concerning shellfish land classification. Local governments, state legislators, and baymen's organizations are notified by mail and given the opportunity to comment on any proposed rule making prior to filing the Notice of Adoption with the Department of State.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact that could have on the health of shellfish consumers. Immediate compliance is required to ensure the general welfare of the public is protected.

***Consolidated Rural Area Flexibility Analysis***

Amendments to 6 NYCRR Part 41 will not impose an adverse impact on rural areas. Only the State's marine district will be directly affected by regulatory initiatives to open or close shellfish lands. The Department of Environmental Conservation has determined that there are no rural areas within the marine district, and no shellfish lands within the marine district are located adjacent to any rural areas of the state. The proposed regulations will not impose reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by amendments of Part 41 ''Sanitary Condition of Shellfish Lands'' of Title 6 NYCRR, the Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not required.

***Consolidated Job Impact Statement***

1. Nature of impact:

Environmental Conservation Law section 13-0307 requires that the department examine shellfish lands and certify which shellfish lands are in such sanitary condition that shellfish may be taken for use as food. Shellfish lands that do not meet the criteria for certified (open) shellfish lands must be designated as uncertified (closed) to protect public health.

Rule makings to amend 6 NYCRR 41, Sanitary Condition of Shellfish Lands, can potentially have a positive or negative effect on jobs for shellfish harvesters. Amendments to reclassify areas as certified may increase job opportunities, while amendments to reclassify areas as uncertified may limit harvesting opportunities.

The department does not have specific information regarding the locations in which individual diggers harvest shellfish, and therefore is unable to assess the specific job impacts on individual shellfish diggers. In general terms, amendments of 6 NYCRR Part 41 to designate areas as uncertified can have negative impacts on harvesting opportunities. The extent of the impact will be determined by the acreage closed, the type of closure (year-round or seasonal), the area's productivity, and the market value of the shellfish. In general, any negative impacts are small because the department's actions to designate areas as uncertified typically only affect a small portion of the shellfish lands in the state. Negative impacts are also diminished in many instances by the fact that shellfish harvesters are able to redirect effort to adjacent certified areas.

2. Categories and numbers affected:

Licensed commercial shellfish diggers can be affected by amendments to 6 NYCRR Part 41. Most harvesters are self-employed, but there are some who work for companies with privately controlled shellfish lands or who harvest surf clams or ocean quahogs in the Atlantic Ocean.

As of September 17, 2013 there were 1,725 licensed shellfish diggers in New York State. The numbers of permits issued for areas in the State are as follows: New York City, 44; Westchester, 4; Town of Hempstead, 94; Town of Oyster Bay, 115; Town of North Hempstead, 5; Town of Babylon, 53; Town of Islip, 132; Town of Brookhaven, 290; Town of Southampton, 169; Town of East Hampton, 265; Town of Shelter Island, 39; Town of Southold, 235; Town of Riverhead, 61; Town of Smithtown, 33; Town of Huntington, 165; other, 21.

It is estimated that ten (10) to twenty-five (25) percent of the diggers are full-time harvesters. The remainders are seasonal or part-time harvesters.

3. Regions of adverse impact:

Certified shellfish lands that could potentially be affected by amendments to 6 NYCRR Part 41 are located in or adjacent to Nassau County, Suffolk County, and a portion of the Long Island Sound north and east of New York City. There is no potential adverse impact to jobs in any other areas of New York State.

4. Minimizing adverse impact:

Shellfish lands are designated as uncertified to protect public health as required by the Environmental Conservation Law. Some impact from rule makings to close areas that do not meet the criteria for certified shellfish lands is unavoidable.

To minimize the impact of closures of shellfish lands, the department evaluates areas to determine whether they can be opened seasonally during periods of improved water quality. The department also operates conditional harvesting programs at the request of, and in cooperation with, local governments. Conditional harvesting programs allow harvest in uncertified areas under prescribed conditions, determined by studies, when bacteriological water quality is acceptable. Additionally, the department operates shellfish transplant harvesting programs which allow removal of shellfish from closed areas for cleansing in certified areas, thereby recovering a valuable resource. Conditional harvesting and shellfish transplant programs increase harvesting opportunities by making the resource in a closed area available under controlled conditions.

5. Self-employment opportunities:

A large majority of shellfish harvesters in New York State are self-employed. Rule makings to change the classification of shellfish lands can have an impact on self-employment opportunities. The impact is dependent on the size and productivity of the affected area and the availability of adjacent lands for shellfish harvesting.

# Department of Financial Services

## EMERGENCY RULE MAKING

### Unclaimed Life Insurance Benefits and Policy Identification

**I.D. No.** DFS-44-13-00008-E
**Filing No.** 1078
**Filing Date:** 2013-10-30
**Effective Date:** 2013-10-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

***Action taken:*** Addition of Part 226 (Regulation 200) to Title 11 NYCRR.

***Statutory authority:*** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521, 4525 and art. 24

***Finding of necessity for emergency rule:*** Preservation of general welfare.

***Specific reasons underlying the finding of necessity:***

Beginning in 2011, the Department conducted an investigation into how life insurance companies and fraternal benefit societies track life insurance policyholders. The Department's investigation found that many insurers had been regularly using lists of recent deaths from the U.S. social security administration ("SSA") to promptly cease making annuity payments. However, most insurers had not been using the lists to determine whether death benefits were payable to beneficiaries.

On July 5, 2011, the Department issued a letter to insurers, pursuant to New York Insurance Law section 308 ("308 Letter"), that required every insurer to submit a report that included a narrative summary of the SSA's Death Master File ("SSA Master File") cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficia-

ries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. To date, over $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. The 308 Letter required a one-time cross-check of the SSA Master File. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The system had led to many abuses, for example in situations where deaths had occurred but without claims having been filed, with an insurer having continued to deduct premiums from the account value or cash value until policies lapsed. In other instances, the policies or accounts had simply remained dormant after death. In those instances, a valid death benefit was either not paid or distributed or was delayed.

To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the Superintendent to search for policies insuring the life of, or owned by, decedents, and to initiate the claims process for any death benefits that are identified as a result of those requests. Any delay in implementing these requirements would result in beneficiaries not receiving benefits or having monies distributed to them to which they are entitled, and in insurers thereby undeservedly retaining such amounts.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the general welfare.

***Subject:*** Unclaimed Life Insurance Benefits and Policy Identification.

***Purpose:*** To ensure payment of unclaimed benefits to policyowners and policy beneficiaries.

***Text of emergency rule:***

*UNCLAIMED LIFE INSURANCE BENEFITS AND POLICY IDENTIFICATION*

*Section 226.0 Purpose*

*(a) Beginning in 2011, the Department conducted an investigation into how life insurance companies and fraternal benefit societies track life insurance policyholders. The Department's investigation found that many insurers had been regularly using lists of recent deaths from the social security administration to promptly cease making annuity payments. However, most insurers had not been using the lists to determine whether death benefits were payable to beneficiaries.*

*(b) The public needs to know that insurers are taking reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the life insurance benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the existing policy values until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.*

*(c) To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part was promulgated on an emergency basis. Subsequently, the Legislature enacted Insurance Law section 3212-a, which was renumbered as section 3240, to address the issues that the Department had observed.*

*(d) This Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests.*

*Section 226.1 Definitions*

*(a) Account means:*

*(1) any mechanism, whether denoted as a retained asset account or otherwise, whereby the settlement of proceeds payable to a beneficiary under a policy is accomplished by the insurer or an entity acting on behalf of the insurer placing the proceeds into an account where the insurer retains those proceeds and the beneficiary has check or draft writing privileges; or*

*(2) any other settlement option relating to the manner of distribution of the proceeds payable under a policy.*

*(b) Death index means the death master file maintained by the United States social security administration or any other database or service that is at least as comprehensive as the death master file maintained by the United States social security administration and that is acceptable to the superintendent.*

*(c) Insured means an individual covered by a policy or an annuitant when the annuity contract provides for benefits to be paid or other monies to be distributed upon the death of the annuitant.*

*(d) Insurer means a life insurance company or fraternal benefit society.*

*(e) Lost policy finder means a service made available by the Department of Financial Services on its website or otherwise developed by the superintendent either on his or her own or in conjunction with other state regulators, to assist consumers with locating unclaimed life insurance benefits.*

*(f) Policy means a life insurance policy, an annuity contract, a certificate under a life insurance policy or annuity contract, or a certificate issued by a fraternal benefit society, under which benefits are to be paid upon the death of the insured, including a policy that has lapsed or been terminated.*

*Section 226.2 Applicability*

*(a) This Part shall apply to a policy that is:*

*(1) issued by a domestic insurer and any account established under or as a result of such policy; or*

*(2) delivered or issued for delivery in this state by an authorized foreign insurer and any account established under or as a result of such policy.*

*(b) Notwithstanding subdivision (a) of this section, with respect to a policy delivered or issued for delivery outside this state, a domestic insurer may, in lieu of the requirements of this Part, implement procedures that meet the minimum requirements of the state in which the insurer delivered or issued the policy, provided that the superintendent determines that such other requirements are no less favorable to the policyowner and beneficiary than those required by this Part.*

*Section 226.3 Multiple policy search procedures*

*(a) Upon receiving notification of the death of an insured or account holder or in the event of a match made by a death index cross-check pursuant to section 226.4 of this Part, an insurer shall search every policy or account subject to this Part to determine whether the insurer has any other policies or accounts for the insured or account holder.*

*(b) An insurer that receives a notification of death of an insured or account holder, or identifies a death index match, shall notify each United States affiliate, parent, or subsidiary, and any entity with which the insurer contracts that may maintain or control records relating to policies or accounts covered by this Part of the notification or verified death index match. An insurer shall take all steps necessary to have each affiliate, parent, subsidiary, or other entity perform the search required by subdivision (a) of this section.*

*Section 226.4 Standards for investigating claims and locating claimants under policies and accounts*

*(a)(1) Except as set forth in paragraph (2) of this subdivision, at no later than policy delivery or the establishment of an account and upon any change of insured, owner, account holder, or beneficiary, an insurer shall request information sufficient to ensure that all benefits or other monies are distributed to the appropriate persons upon the death of the insured or account holder, including, at a minimum, the name, address, date of birth, social security number, and telephone number of every owner, account holder, insured and beneficiary of such policy or account, as applicable.*

*(2) Where an insurer issues a policy or provides for an account based on information received directly from an insured's employer, the insurer may obtain the beneficiary information described in paragraph (1) of this subdivision by communicating with the insured after the insurer's receipt of the information from the insured's employer.*

*(b)(1) An insurer shall use the latest available updated version of the death index to cross-check every policy and account subject to this Part, except as specified in subdivision (h) of this section. The cross-checks shall be performed no less frequently than quarterly. An insurer may submit a request to the superintendent for the insurer to perform the cross-checks less frequently than quarterly, but in no event shall the cross-checks be performed less frequently than semi-annually. The superintendent may grant such a request upon the insurer's demonstration of hardship.*

*(2) The cross-checks shall be performed using:*

*(i) the insured or account holder's social security number; or*

*(ii) where the insurer does not know the insured or account holder's social security number, the name and date of birth of the insured or account holder.*

*(3) An insurer may comply with the requirements of this subdivision by using the full death index once annually and using the death index update files for the remaining cross-checks in that year.*

*(c) If an insurer uses a resource instead of or in addition to a death index in order to terminate benefits or close an account, the insurer shall also use that resource when cross-checking policies or accounts pursuant to subdivision (b) of this section.*

*(d) If an insurer uses a resource more frequently than quarterly in order to terminate benefits or close an account, the insurer shall use that resource with the same frequency when cross-checking policies or accounts pursuant to subdivision (b) of this section.*

*(e) Every insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, including:*

*(1) nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;*

*(2) compound last names, and blank spaces or apostrophes in last name;*

*(3) incomplete date of birth data, and transposition of the "month" and "date" portions of the date of birth;*

*(4) incomplete social security number; and*

*(5) common data entry errors in name, date of birth and social security data.*

*(f) If an insurer only has a partial name, social security number, date of birth, or a combination thereof, of the insured or account holder under a policy or account, then the insurer shall use the available information to perform the cross-check pursuant to subdivision (b) of this section, which may be accomplished by using the procedures outlined in subdivision (e) of this section.*

*(g) Every insurer shall establish reasonable procedures to locate beneficiaries and shall make prompt payments or distributions in accordance with Part 216 of this Title (Insurance Regulation 64).*

*(h) This section shall not apply to any policy or any account:*

*(1) where the insurer has fully satisfied all obligations under the policy or account prior to the date that the cross-check is performed;*

*(2) where the insurer has paid full death benefits on all insureds under the policy, or where the remaining obligations have been transferred to one or more new policies or accounts providing benefits of any kind in the event of the death of the insured or account holder;*

*(3) where the insurer has paid full surrender benefits on the policy, including a policy that is replaced after full surrender;*

*(4) where the policy has been rescinded and the insurer has returned all paid premiums;*

*(5) where the policy has been returned under a free-look provision and the insurer has returned all paid premiums;*

*(6) where the insurer has paid full maturity benefits under the policy;*

*(7) where the insurer does not maintain or control the records containing the information necessary to comply with the requirements of this section under a group policy administered by the group policyholder;*

*(8) where all monies due under the policy or account have escheated in accordance with state unclaimed property statutes;*

*(9) where the insurer has novated the policy;*

*(10) where the policy is a group annuity contract that funds employer-sponsored retirement plans and the insurer is not obligated by the terms of the contract to pay death benefits directly to the plan participant's beneficiary;*

*(11) where the insurer receives payroll deduction contributions for either a group or individual policy and a payment has been made in the 90 days prior to a cross-check;*

*(12) except as to retired employees, where premiums are wholly paid by an employer on an individual or group policy; or*

*(13) where a policy has lapsed or terminated with no benefits payable that was cross-checked with a death index within the 18 months preceding the effective date of this Part or that was cross-checked with a death index more than 18 months prior to the most recent cross-check conducted by the insurer.*

*Section 226.5 Lost policy finder application procedures*

*(a) An insurer shall:*

*(1) upon receiving a request forwarded by the superintendent through a lost policy finder, search for policies, excluding group policies administered by group policyholders where the insurer does not maintain or control the records containing the information necessary to comply with the requirements of section 226.4 of this Part, and any accounts subject to this Part that insure the life of, or are owned by, an individual named as the decedent in the request forwarded by the superintendent;*

*(2) report to the superintendent through a lost policy finder:*

*(i) within 30 days of receiving the request, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, the findings of the search; and*

*(ii) where the search reveals that benefits may be due, within 30 days of the final disposition of the request, the benefit paid and any other information requested by the superintendent; and*

*(3) within 30 days of receiving the request, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, for each identified policy and account insuring the life of, or owned by, the named decedent, provide to:*

*(i) a requestor who is also the beneficiary of record on the identified policy or account all items, statements and forms that the insurer reasonably believes to be necessary in order to file a claim; or*

*(ii) a requestor who is not the beneficiary of record on the identified policy or account the requested information to the extent permissible to be disclosed in accordance with Part 420 (Insurance Regulation 169) of this Title and any other applicable privacy law, and to take such other steps necessary to facilitate the payment of any benefit that may be due under the identified policy or account.*

*(b)(1) An insurer shall establish procedures to electronically receive the lost policy finder request from, and make reports to, the superintendent as provided for in subdivision (a) of this section. When transmitted electronically, the date that the superintendent forwards the request shall be deemed to be the date of receipt by the insurer; provided however that if the date is a Saturday, Sunday or a public holiday, as defined in General Construction Law section 24, then the date of receipt shall be as provided in General Construction Law section 25-a.*

*(2) An insurer required to electronically receive and submit pursuant to this Part may apply to the superintendent for an exemption from the requirement that the submission be electronic by submitting a written request to the superintendent for approval.*

*(3) The insurer's request for an exemption shall specify whether it is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.*

*(4) The insurer requesting an exemption shall submit, upon the superintendent's request, any additional information necessary for the superintendent to evaluate the insurer's request for an exemption.*

*(5) The insurer shall be exempt from the electronic submission requirement upon the superintendent's written determination so exempting the insurer. The superintendent's determination will specify the basis upon which the superintendent is granting the request and for how long the exemption applies.*

*(6) If the superintendent approves an insurer's request for an exemption from the electronic submission requirement, then the insurer shall make a physical submission in a form and manner acceptable to the superintendent.*

*Section 226.6 Report to the comptroller*

*An insurer subject to this Part shall include in the report required under Abandoned Property Law section 703 any information on unclaimed benefits due pursuant to this Part and the number of policies and accounts that the insurer has identified pursuant to section 226.4 of this Part for the prior calendar year under which any outstanding monies have not been paid or distributed by December thirty-first of such year, except potential matches still being investigated pursuant to section 226.4 of this Part. A copy of the report also shall be filed with the superintendent.*

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-44-13-00008-P, Issue of October 30, 2013. The emergency rule will expire December 28, 2013

***Text of rule and any required statements and analyses may be obtained from:*** Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@dfs.ny.gov

***Regulatory Impact Statement***

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521, and 4525 and Article 24 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services.

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting, among others, the Insurance Law.

Insurance Law section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity that makes a filing or submission with the Superintendent, pursuant to the Insurance Law, to do so by electronic means.

Insurance Law section 1102 authorizes the Superintendent to refuse to issue or renew an insurer's license if such refusal will best promote the interests of the people of this state.

Insurance Law section 1104 authorizes the Superintendent to revoke the license of a foreign insurer if such revocation is reasonably necessary to protect the interests of the people of this state.

Insurance Law Article 24 regulates trade practices in the insurance industry by prohibiting practices that constitute unfair methods of competition or unfair or deceptive acts or practices.

Insurance Law section 2601 prohibits insurers from engaging in unfair claim settlement practices, including the failure to adopt and implement reasonable standards for prompt investigation of claims.

Insurance Law section 3240 (Unclaimed benefits) requires insurers to compare life insurance policies against the federal death master file to identify potential matches of their insureds or account holders and to undertake a good faith effort to confirm the death of the insureds and locate beneficiaries. Section 3240(j) authorizes the superintendent to promulgate rules and regulations to implement the statute.

Insurance Law section 4521 authorizes the Superintendent to revoke or suspend a fraternal benefit society's license if such society is not carrying out its contracts in good faith.

Insurance Law section 4525 applies Articles 3 and 24 of the Insurance Law to authorized fraternal benefit societies.

2. Legislative objectives: Beginning in 2011, the Department investigated allegations of unfair claims and trade practices by authorized life insurers and fraternal benefit societies (collectively herein, "insurers") in connection with claims and the location of beneficiaries. The Department was concerned that many insurers had not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits due under policies and accounts. In particular, there were instances in which a death had occurred and no claim had been filed, but premiums continued to be deducted from the account value or cash value until the policy lapsed. In other instances, the policies or accounts may simply have remained dormant after death. In these instances, a valid death benefit was either not paid or distributed or was delayed.

The Department met with several insurers that have substantial writings in New York to discuss past and current claim and death benefit payment practices. Some insurers had used the U.S. Social Security Administration's Death Master File ("SSA Master File") to confirm the death of contract holders so that they could cease making annuity payments, but had not used the SSA Master File to determine whether any death benefit payments were due under insurance policies or other accounts.

The Department sent a letter, dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required each insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over $812 million has been paid nationwide to beneficiaries, including more than $241 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison to the SSA Master File. This rule was promulgated on an emergency basis to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage that the Department receives through its new Lost Policy Finder application, or within 45 days of receiving the request where an insurer contracts with another entity to maintain the insurer's records. The rule also requires an insurer to notify the beneficiary, within 30 days of the Department's notification, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

After the initial issuance of the regulation, the Legislature in 2012 enacted Insurance Law section 3213-a, which required insurers to perform a comparison of life insurance policies against the federal death master file to identify potential matches of their insureds or account holders and to undertake a good faith effort to confirm the death of insureds and locate beneficiaries. It also authorized the Superintendent to promulgate rules and regulations to implement the statute. Although the governor signed the bill into law, he expressed a number of concerns with the legislation. A chapter amendment amended the bill, addressing those concerns. The chapter amendment also renumbered the section as section 3240. Since the original bill had a delayed effective date, it never took effect in its original form. The regulation has been amended to conform to the requirements of new section 3240 (Unclaimed benefits).

3. Needs and benefits: Many insurers had not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits under policies and accounts. The Department conducted an investigation into how insurers track life insurance policy holders. The Department found that many insurers had regularly been using lists of recent deaths from the Social Security Administration to promptly cease making annuity payments. However, most insurers had not been using the lists to determine whether death benefits were payable to beneficiaries.

This practice led to many abuses. For example, in some instances, a death may have occurred with no claim being filed, but premiums would continue to be deducted from the account value or cash value until the policy lapsed. In other cases, the policies or accounts may simply have remained dormant after death. In these instances, a valid death benefit was either not paid or distributed or was delayed.

While insurers were extremely diligent about terminating benefits, they were much less so in seeing that benefits were paid to beneficiaries and that monies held by them in accounts were properly distributed. Insurers must take reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled.

To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, this Part requires insurers to respond to requests from the Superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests. It also establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

4. Costs: All insurers affected by this rule have already implemented procedures required by this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, May 6, 2013, and August 2, 2013. Additionally, in response to the 308 Letter sent by the Department to insurers in July 2011, several insurers had confirmed then that they had already established, or were in the process of establishing, the standards and procedures required by this rule. Thus, insurers should incur only minimal, if any, additional costs to comply with the requirements of this rule.

As a result of the 308 Letter, to date, more than $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. Additionally, more than $338 million has been escheated or identified for escheatment. The amounts paid to beneficiaries and escheated (or identified for escheatment) now totals more than $1.1 billion.

The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the minimal costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance of this rule. There are no costs to any other state government agency or local government.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: There are no viable alternatives to this rule. As a result of the 308 Letter, to date, more than $812 million has been paid to benefi-

ciaries nationwide, including more than $241 million paid to New York beneficiaries. Additionally, more than $338 million has been escheated or identified for escheatment. The amount paid to beneficiaries and escheated (or identified for escheatment) now totals more than $1.1 billion - unquestionably an ongoing benefit to the public. While some insurers may have voluntarily implemented these procedures, promulgation of this rule was necessary to require all insurers to do so. This rule addresses unfair claims and trade practices by insurers in a manner that protects the public while providing minimal burdens on insurers.

After considering comments received from insurers after the 308 Letter was issued, the Department issued guidance to supplement the 308 Letter. This rule incorporates those comments.

After the regulation was first promulgated on an emergency basis, the Legislature enacted section 3213-a, now 3240 (Unclaimed benefits). The regulation is revised to the extent necessary to conform to the statute.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: All insurers affected by this rule have already complied with the requirements of this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, May 6, 2013, and August 2, 2013. Therefore, this rule will take effect upon filing with the Secretary of State.

***Regulatory Flexibility Analysis***

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact or any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at life insurers and fraternal benefit societies (collectively, "insurers") that are authorized to do business in New York State, none of which are a "small business" as defined in section 102(8) of the State Administrative Procedure Act. The Department has reviewed filed reports on examination and annual statements of these authorized insurers and believes that none of them fall within the definition of "small business," because there are none which are both independently owned and operated and have less than one hundred employees.

2. Local governments: This rule does not impose any adverse economic impact on local governments, including reporting, recordkeeping, or other compliance requirements.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas: Insurers covered by this rule do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule requires authorized life insurers and fraternal benefit societies (collectively, "insurers") to establish standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of the death of an insured or account holder. It also requires insurers to establish procedures to search for policies and accounts upon receipt of a death notice or the Superintendent's notification of a request to identify coverage, which was received through the Lost Policy Finder application. It requires insurers to perform, no less than quarterly, a cross-check of the death index (i.e., the U.S. Social Security Administration's Death Master File ("SSA Master File") or any other database or service that is acceptable to the Superintendent). In addition, it requires insurers to establish procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Additionally, section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

3. Costs: All insurers affected by this rule have already implemented procedures required by this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, May 6, 2013, and August 2, 2013. Additionally, in response to the 308 Letter sent by the Department to insurers in July 2011, several insurers had confirmed then that they had already established, or were in the process of establishing, the standards and procedures required by this rule. Thus, insurers should incur only minimal, if any, additional costs to comply with the requirements of this rule.

As a result of the 308 Letter, to date, more than $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. Additionally, more than $338 million has been escheated or identified for escheatment. The amounts paid to beneficiaries and escheated (or identified for escheatment) now totals more than $1.1 billion.

The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the minimal costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance with this rule. There are no costs to any other state government agency or local government.

4. Minimizing adverse impact: The public needs to know that insurers are taking reasonable steps to ensure that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

The Department sent a letter, dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required the insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over $812 million has been paid nationwide to beneficiaries, including more than $241 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison of the SSA Master File. This rule was promulgated on an emergency basis to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage that the Department received through its new Lost Policy Finder application, or within 45 days of receiving the request where an insurer contracts with another entity to maintain the insurer's records. The rule also requires the insurer to notify the beneficiary, within 30 days of the Department's notification, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

The rule thus ensures that insurers will continue to make death index cross-check efforts so that policyowners and policy beneficiaries will be provided with all of the benefits for which they have paid and to which they are entitled. This rule will result in the rightful payment of millions of dollars of additional benefits to beneficiaries. Therefore, it is necessary for all insurers to comply with the requirements of this rule.

5. Rural area participation: The Department received comments from insurers, including those doing business in rural areas of the State, regarding the 308 Letter. Those comments have been incorporated into this rule.

***Job Impact Statement***

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. This rule requires insurers to establish standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of an ind-

ividual's death. It also requires insurers to set up procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

The Department believes that this rule will not have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

# New York State Gaming Commission

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Shock Wave Therapy Regulations**

**I.D. No.** SGC-47-13-00016-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** Addition of section 4043.14 to Title 9 NYCRR.

***Statutory authority:*** Racing, Pari-Mutuel, Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

***Subject:*** Shock wave therapy regulations.

***Purpose:*** To enhance the integrity and safety of horse racing.

***Text of proposed rule:*** A new section 4043.16 is added to 9 NYCRR as follows:

*4043.14 Restrictions on shock or pulse wave therapy*

*The use of extracorporeal shock wave therapy, radial pulse wave therapy or similar treatments shall not be permitted unless the following conditions are met:*

*(a) The use of extracorporeal shock wave therapy, radial pulse wave therapy or similar treatments within the State:*

*(1) is limited to veterinarians licensed to practice by the commission; and*

*(2) may only be performed with machines that are:*

*(i) registered with and approved for use by the commission; and*

*(ii) used at a pre-disclosed location that is approved by the commission.*

*(b) Any extracorporeal shock wave therapy, radial pulse wave therapy or similar machine, whether in operating condition or not, must be registered with and approved by the commission before such machine is brought onto or possessed on the grounds of a licensed race track.*

*(c) Trainers shall report all extracorporeal shock wave therapy, radial pulse wave therapy or similar treatments that are administered to horses trained by them, in a form and manner approved by the commission, no later than the day after the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. A horse that is so treated shall be added to a list of ineligible horses. Such list shall be kept in the race office and be made accessible to jockeys and their agents during normal business hours. The commission may share information from such list with other racing jurisdictions.*

*(d) A horse that receives any such treatment is not permitted to race or breeze for a minimum of 10 days following treatment.*

*(e) A horse that receives any such treatment without full compliance with this section and any similar rules in any other jurisdiction in which the horse was treated shall be placed on the stewards' list.*

*(f) Any person who violates this section may be subjected to a fine, exclusion from all New York racetracks, and the suspension or revocation of any occupational license held by such person.*

***Text of proposed rule and any required statements and analyses may be obtained from:*** Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Regulatory Impact Statement***

1. Statutory authority and legislative objectives of such authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104 (1, 19), and 122. Under section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the state. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the state and over the corporations, associations, and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the New York State Gaming Commission to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to permit the use of extracorporeal shock wave therapy, radial pulse wave therapy and similar physiological treatments (collectively, "energy wave therapy") on thoroughbred race horses while ensuring that such therapy is administered in a manner that protects race integrity and the safety of both the horse and the rider.

Energy wave therapy is the application of energy in the form of external acoustic waves to muscles in order to promote circulation and healing. Focused shock wave therapy is directed at a specific point in the muscle. Radial pulse wave therapy involves the application of energy over a general area. Such therapy is beneficial not only for its direct effect. It also offers non-medicinal pain killing benefits. This non-medicinal method reduces the risk of overmedicating a horse with conventional medications that may create unintended reactions with other medications or an equine drug test positive.

The pain-killing effects of energy wave theory is caused by a numbing of the sensory nerves and the nerves that activate muscle activity. A horse that has received such therapy requires time for recovery and is not in condition to compete or run at high speed for several days after treatment. As such, the rule requires that all energy wave therapy treatments be reported to the Commission by the next day, and that a horse be prohibited from racing or breezing for a period of 10 days after receiving such therapy. Such reports will be posted in the racing office and available for inspection by exercise riders, jockeys, and their agents. The information will also be shared with other racing jurisdictions. This is necessary to avoid injury to the horse or the rider as a result of a stumble or fall.

The rule is also necessary to monitor and track the use of energy wave therapy machines on racehorses and requires that only qualified and authorized persons administer such treatments. The rule will require that all energy wave therapy machines are registered with, and approved by, the Commission. This will ensure that only personnel who are authorized to use such machines use them and that such machines are in fact designed for use on horses. Doing so will prevent the use of unproven therapy devices or application of such therapy by unqualified persons, and facilitate Commission enforcement of the exclusion periods. The rule requires that a horse that is not treated in compliance with these rules, or with the applicable rules in the jurisdiction where the horse is treated, shall be placed on the stewards' list in New York. A horse that is placed on such list cannot race until the stewards have investigated the incident and determined on an appropriate restriction on the racing activities of the horse.

While the Commission began evaluating the need for regulation of energy wave therapy in 2011, the need for regulation was bolstered by the findings of the New York State Task Force on Racehorse Safety and Health which recommended the following in its September 2012 report: "The Task Force believes that the regulation of [energy wave therapy] is a regulatory responsibility of the NYSRWB, which has greater policing and sanctioning authority than NYRA. The NYSRWB should adopt a rule similar to the ARCI Model Rule, but its controlled use should be limited to racing and high-speed exercise." This rulemaking is consistent with the recommendation of the Task Force, which was formed in response to several fatal thoroughbred breakdowns in 2011 and 2012.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The Commission's existing regulatory framework will allow the tracking of energy wave therapy administration and registering of such therapy machines.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission relied on the studies and/or advice provided by its Director of the New York State Gaming Commission's Drug Testing and Research Program, Dr. George A. Maylin.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the

reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate parimutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The Commission will utilize a webpage for all energy wave therapy reporting. Using their own computer or a computer terminal made available at a Gaming Commission racetrack office, trainers and veterinarians will be able to sign onto a limited access reporting webpage and input the energy wave therapy information.

The Commission will develop an online web-based portal for registering an energy wave therapy machine and reporting treatments. The form will require the name of the veterinarian who will use the machine, the brand name, model and serial number of the machine, and where the machine will be used. The treatment reports will require the name of the horse, trainer, and treating veterinarian, the machine and location used for the treatment, the part of the horse that was treated, and the date and time of the treatment.

7. Duplication: None.

8. Alternatives: The Commission considered alternatives as to when a horse that has received energy wave therapy may return to racing and high-speed training. The Commission considered banning training for a full 10 days but, since some horses benefit from exercise therapy, opted to allow some form of exercise under a veterinarian's care. After consulting with industry representatives, the Commission decided to allow a treated horse to train at levels other than race speed or breezing, i.e., high-speed exercise.

9. Federal standards: None.

10. Compliance schedule: The rule can be implemented immediately upon publication as an adopted rule.

***Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***

This proposal does not require a Regulatory Flexibility Statement, Jobs Impact Statement or Rural Area Flexibility Statement as the amendment merely creates a registration and reporting requirement before the veterinarian who treats a race horse with energy wave therapy. The Commission has already implemented a successful online web-based reporting portal for trainers, or treating veterinarians who have been designated to make the reports by the trainer, to report all corticosteroid joint injections. There has been very good compliance with this reporting system, as determined by over 75 investigations conducted by Commission staff during the first six months of operation of the reporting system. Trainers and veterinarians are acclimated to using this electronic reporting system, which also provides them with a free and efficient method to register energy wave therapy equipment and report each treatment. The rule is entirely limited to the use of energy wave therapy on race horses. This rulemaking will not have a positive or negative impact on jobs. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

# Department of Health

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

**Assisted Living Residences (ALRs) and Adult Care Facilities (ACFs)**

**I.D. No.** HLT-47-13-00013-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** This is a consensus rule making to amend sections 487.4 and 488.4 of Title 18 NYCRR; and section 1001.7 of Title 10 NYCRR.

***Statutory authority:*** Social Services Law, section 461; and Public Health Law, section 4662

***Subject:*** Assisted Living Residences (ALRs) and Adult Care Facilities (ACFs).

***Purpose:*** To simplify the pre-admission and annual resident medical evaluation process for ALRs and ACFs.

***Text of proposed rule:*** Subdivision (f) of Section 487.4 of Title 18 is amended as follows:

(f) Each medical evaluation (DSS-03122 or an approved substitute) shall be a written[,] and signed report from a physician*, physician assistant or nurse practitioner* which includes:

(1) the date of examination, significant medical history and current conditions, known allergies, the prescribed medication regimen, including information on the applicant's ability to self-administer medications, recommendations for diet, exercise, recreation, frequency of medical examinations and assistance needed in the activities of daily living;

(2) a statement that the resident is not medically or mentally unsuited for care in the facility;

(3) a statement that the resident does not require placement in a hospital or residential health care facility; and

(4) a statement that the physician*, physician assistant or nurse practitioner* has physically examined the resident within 30 days prior to the date of admission or, for required annual evaluations, within 30 days prior to the date of the report.

* * *

Paragraph (1) of subdivision (d) of Section 488.4 of Title 18 is amended as follows:

(d) An operator must not admit nor retain an individual without a determination being made that the enriched housing program can support the physical and social needs of the resident. Such determination must be based upon:

(1) a medical evaluation (DSS-3122 or an approved substitute) written and signed by a physician*, physician assistant or nurse practitioner*, which includes:

(i) the date of examination, significant medical history and current conditions, known allergies, the prescribed medication regimen, including information on the applicant's ability to self-administer medications, recommendations for diet, exercise, recreation, frequency of medical examinations and assistance needed in the activities of daily living;

(ii) a statement that a resident is medically or mentally suited for care in the enriched housing program;

(iii) a statement that the resident does not require placement in a hospital or residential health care facility; and

(iv) a dated statement indicating that the physician*, physician assistant or nurse practitioner* has physically examined the resident within 30 days prior to the date of admission, or for required annual evaluations within 30 days prior to the date of the report.

* * *

Subdivision (h) of Section 1001.7 of Title 10 is amended as follows:

(h) Medical evaluation. The operator shall assure that a medical evaluation, on a Department form or a Department-approved substitute, is conducted for every prospective resident. The medical evaluation shall be conducted within 30 days prior to the date of admission; and whenever a change in the resident's condition warrants, but no less than once in every 12 months. Such medical evaluation shall be a written and signed report from a physician*, physician assistant or nurse practitioner*, which includes:

(1) the date of examination, significant medical history and current conditions, known allergies, the prescribed medication regimen, including information on the applicant's ability to self-administer medications, recommendations for diet, exercise, recreation, frequency of medical examinations, cognitive and mental health status, and assistance needed in the activities of daily living;

(2) a statement that the individual is or is not medically suited for care in the assisted living residence and, if applicable, the enhanced assisted living residence or special needs assisted living residence;

(3) a statement that the individual is or is not mentally suited for care in the assisted living residence, and, if applicable, the enhanced assisted living residence or special needs assisted living residence;

(4) a statement that the individual is or is not in need of long term medical or nursing care or supervision, which would require placement in a hospital or nursing home; and

(5) a statement that the individual is or is not in need of twenty-four hour skilled nursing care.

* * *

***Text of proposed rule and any required statements and analyses may be obtained from:*** Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Consensus Rule Making Determination***

Statutory Authority:

Section 461 of the Social Services Law authorizes the New York State Department of Health to promulgate, alter or amend regulations governing adult care facilities, including but not limited to establishing fiscal, administrative, architectural, safety, nutritional and program standards which apply to all adult care facilities subject to its inspection and supervision, after consultation with the New York State Office for the Aging and the Department of Mental Hygiene. Section 4662 of the Public Health Law authorizes the Commissioner to promulgate, in consultation with the director of the New York State Office for the Aging, rules and regulations necessary to implement statutes governing assisted living residences.

Basis:

Section 1 of Chapter 168 of the Laws of 2011, which became effective on July 20, 2011, amended the Public Health Law and the Social Services Law in relation to pre-admission reports for persons entering assisted living residences and adult care facilities and permitting reports to be made by a physician assistant or a nurse practitioner. New subdivision 3 of Section 4657 of the Public Health Law and subdivision 7 of Section 461-c of the Social Services Law require that at the time of the admission to an assisted living residence or adult care facility, other than a shelter for adults, a resident shall submit to the facility a written report from a physician, a physician assistant or a nurse practitioner. The report must state that the physician, physician assistant or nurse practitioner has physically examined the resident within one month and the date of such examination. The resident must be examined by a physician, physician assistant or nurse practitioner at least annually and must submit an annual written report from that physician, physician assistant or nurse practitioner.

Current regulations governing adult care facilities and assisted living residences require that each medical evaluation (DSS-3122 or an approved substitute) be a written and signed report from a physician. The proposed amendments allow physician assistants and nurse practitioners to sign required medical evaluations, and simply conforms the regulations to existing statutory provisions. The New York State Office for the Aging and the Office of Mental Health have no objection to the proposed amendments and the Department anticipates that the proposed amendments will be non-controversial.

Since this is a rule proposed by the Department of Health for adoption with the expectation that no person is likely to object to its adoption because it merely conforms to non-discretionary statutory provisions, the proposed rule qualifies as a consensus rule. A consensus rule is "a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely (a) repeals regulatory provisions which are no longer applicable to any person, (b) implements or conforms to non-discretionary statutory provisions, or (c) makes technical changes or is otherwise non-controversial." SAPA § 102(11).

***Job Impact Statement***

No Job Impact Statement is required pursuant to section 201 a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

# Division of Housing and Community Renewal

## NOTICE OF ADOPTION

**Regulations Govern Selection of Housing Companies and Their Supervision Under the Low Income Housing Tax Credit Program**

**I.D. No.** HCR-33-13-00020-A

**Filing No.** 1104

**Filing Date:** 2013-11-05

**Effective Date:** 2013-11-20

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

***Action taken:*** Amendment of Part 2040 of Title 9 NYCRR.

***Statutory authority:*** Executive Order No. 135, dated February 27, 1990, as continued by Executive Order No. 11, dated March 2, 2011; U.S. Internal Revenue Code, section 42(m); Public Housing Law, section 19

***Subject:*** The regulations govern selection of housing companies and their supervision under the Low Income Housing Tax Credit program.

***Purpose:*** To amend definitions, threshold criteria, and application scoring utilized in the allocation of low-income housing credits.

***Substance of final rule:*** 9 NYCRR Part 2040 is amended as follows:

1. Replace reference to New York State Division of Housing and Community Renewal noted as "division" with upper case "Division" throughout regulation, ensuring agency name clarity.

2. Amend the definition of "Adjusted project cost" to clarify it, deleting unnecessary references.

3. Amend the definition of "Code" to include reference to the Internal Revenue Service regulations, rulings and publications which clarify Section 42 of the Internal Revenue Code.

4. Delete the definition of "Compliance period" since it is Code-defined.

5. Add a new definition of "Cost certification" for consistency with NYS Housing Finance Agency ("HFA") QAP.

6. Delete the definition of "Extended use period" since it is Code-defined.

7. Amend the definition of "Feasibility review" to correspond with underwriting requirements and stress cost reasonableness.

8. Amend the definition of "Identity of interest" to elaborate upon the specific parties to the transaction which would be considered under the definition.

9. Amend the definition of "Preservation project" to clarify existing housing must be government regulated.

10. Delete the definition of "Qualified low-income housing project" since it is Code-defined.

11. Add a new defined term "State Designated Building" for projects eligible for a Division-designated increase in tax credits per the Code.

12. Amend the definition of "Supportable debt" for consistency with current policy.

13. Amend the definition of "Supportive housing" to include a provision that projects meeting this Definition, and corresponding funding set-aside, must meet set asides of 30% or as determined by the annual request for proposals, obtain financing from the government agency assisting client population and provide housing in an integrated setting.

14. Amend the definition of "Visitability" to reflect current threshold eligibility standards for accessibility.

15. Revise language at 2040.3(b), "Documentation," for consistency with current application processing, eliminating references to incomplete application review.

16. Add language at 2040.3(c), "Processing fees," allowing nonprofit joint ventures to request fee deferral and requiring a new $1,000 fee for discretionary binding agreement review and letter issuance.

17. Revise language at 2040.3(d), "Credit allocation process," to include the project review factors of site suitability, and meeting State and regional economic development council goals, consistent with current policy.

18. Revise threshold eligibility language at 2040.3(e)(8) requiring the Division provide notification of development team non-compliance.

19. Revise language at 2040.3(e)(9) to coordinate waiver notification requirements.

20. Modify threshold eligibility language at 2040.3(e)(10) to clarify current documentation submission requirements for evaluating project sites/buildings.

21. Revise language at 2040.3(e)(15) to mandate cost reasonableness for the acquisition of occupied buildings and ensuring consistency with other sections pertaining to project selection.

22. Revise the language at 2040.3(e)(17) to provide the Division with flexibility in setting minimum regulatory term for projects each funding round.

23. Revise the threshold language at 2040.3(e)(18) pertaining to green and energy efficient sustainable building practices to ensure flexibility in setting minimum standards annually and to require applicant certification to meeting such requirements.

24. Add a new credit/background review threshold requirement at 2040.3(e)(19) for the Division to review whether applicant credit worthiness and financial wherewithal are satisfactory.

25. Add new language at 2040.3(e)(20) to mandate that project developers and their contractors not contract with entities on federal or state debarment lists.

26. Add a new threshold provision at 2040.3(e)(21) to indicate projects must not significantly exceed costs of other projects unless otherwise determined to be in furtherance of State housing goals.

27. Delete the last sentence at 2040.3(f) stating scoring criteria are listed in descending point order to maintain current ordering of most scoring items in light of other changes in point allotment and new provisions revisions.

28. Amend "community impact/revitalization" scoring provision at 2040.3(f)(1) by: deleting previous sub-section (ii) and, modifying former

sub-section (iii), now (ii), to clarify that the project type must be complementary to a local neighborhood-specific revitalization plan and corresponding local efforts to address revitalization and blight; adding a new sub-section (iii) with 5 points to advance specific local housing objectives of regional economic development councils; and, moving points to amended section 2040.3(f)(9) as more suitable to the evaluation of project readiness.

29. Amend the "Green building" scoring provision at 2040.3(f)(4) by reducing the scoring points in light of the inclusion of more green building requirements in threshold eligibility and the need to allocate points for new scoring categories, as well as by indicating specific scoring parameters will be noted in the request for proposals to ensure flexibility and consistency with current industry standards.

30. Delete the "long term affordability" scoring provision to correspond to proposed changes to threshold eligibility at 2040.3(e)(17) as described in paragraph 22.

31. Amend the "fully accessible and adapted, move-in ready units" criteria now at 2040.3(f)(5)(i) and (ii), clarifying roll-in shower provisions, accessible unit distribution and requiring a written agreement with service organization to assist in marketing units to the target population benefitting from accessible units and omitting a previous requirement to provide tenant services.

32. Renumber and modify the "affordability" scoring provision now at 2040.3(f)(6) to score projects on the basis of both income targets served and the affordability of such units to tenants at the specified income levels.

33. Delete the "energy efficiency" scoring item at former 2040.3(f)(9) to correspond with the relocation of key elements of this provision into threshold eligibility as explained in paragraph 23.

34. Amend the "Project readiness" scoring criteria now at 2040.3(f)(9) by increasing the scoring point value from 5 to 10 points for shovel ready projects likely to promptly close on construction financing by virtue of the status of financing commitments, environmental approvals or clearances and local implementation measures in support of the project (per paragraph 28).

35. Amend the "Participation of non-profit organizations" scoring item now at 2040.3(f)(11) to enable projects with more than one non-profit applicant/developer to benefit from these points and requiring non-profits participating in project to have demonstrable housing experience to qualify under this section.

36. Add a new 5 point scoring category, "Cost effectiveness," at 2040.3(f)(14) to foster cost containment by providing points for projects with total costs lower than other projects.

37. Add a new 3 point category, "Housing opportunity projects" at 2040.3(f)(15) to support a State preference for projects located in communities well-served by public transportation, low crime rates and high performing schools which may be located outside of a HUD-designated Qualified Census Tract.

38. Add a new 2 point provision, "Minority and Women Owned Business Enterprise participation" at 2040.3(f)(16) to encourage projects to utilize and contract with certified New York State minority and women-owned businesses.

39. Delete the former scoring provision, "Project amenities," at 2040.3(f)(16) to correspond with the move of many of the former scoring provisions to threshold eligibility, also allowing th allotment of scoring points to new categories.

40. Revise the language at 2040.3(g)(1)(ii) to clarify that the preferences elaborated in this section are Code-mandated.

41. Revise the language for "Cost standards" at 2040.3(g)(2)(i) to promote clarity and project cost containment by reducing allowable fees for builder's profit and builder's overhead, utilizing affordable housing industry standards.

42. In conjunction with the amended definition noted in paragraph 8., revise the "Identity of interest" language at 2040.3(g)(2)(iii) to clarify the circumstances under which allowable project costs might be reduced by the Division, as well as to strengthen disclosure requirements.

43. Revise the "Syndication standards" language at 2040.3(g)(3), setting the project ownership interest percentage for the project owner/taxpayer at 99.9%, which potentially maximizes the leveraging of private equity financing for the project and is consistent with affordable housing industry and tax credit standards.

44. Revise the wording of the "General" provision at 2040.3(g)(5) by updating State goals to promote coordinated investments with government agencies and by providing clarity in stating the circumstances under which an allocation may be made irrespective of point ranking.

45. Amend the language regarding "Eligible projects" at 2040.4(a) to clarify that the tax-exempt bond projects described in this section continue to be HFA-administered.

46. Delete the provision at 2040.4(f) since it is incorporated in 2040.4(a) and it is unnecessary.

47. Amend the "Request for qualified contract" at 2040.5(c) to clarify that projects seeking to opt out of extended use agreement via qualified contract at the end of the initial 15 year credit compliance period may only do so if they are eligible under their extended use agreement and to state that projects making such a request will be required to submit a documentation checklist and cover all costs incurred by the Division which are associated with evaluation of the request.

48. Add a new sub-section at 2040.5(d) to require that all projects maintain and update records regarding unit vacancies to foster disaster relief preparedness.

49. Revise the language for "Changes in ownership" at 2040.6(b) to clarify that project owners must obtain the Division's written confirmation of no objection to any proposed change in project ownership.

50. Revised to correct the title of the Division's monitoring officer at 2040.7(b).

51. Amend the language for "Monitoring fee" at 2040.7(c) to indicate that the annual monitoring fee charged by the Division will vary based on project type and size, consistent with a similar provision in HFA's QAP.

52. Add a new provision, "Required staff training," at 2040.7(d) to require that the project owner's management staff complete compliance certification programs and to include this requirement in owner's management plan, ensuring that the staff responsible for maintaining project compliance throughout the term of the project's operation are appropriately trained.

53. Amend the language for "Recordkeeping" at 2040.7(e)(6) and (7) to clarify that the owner must retain all pertinent project records including income certifications, recertifications, and other Code-required documentation.

54. Add a new sub-section at 2040.8(b)(ii)(b)(4) allowing the Division the discretion to continue requiring annual tenant income certifications, or to reinstate them if previously waived, to ensure units remain Code-compliant.

55. Delete and/or replace all the provisions of the SLIHC Regulation commencing at 2040.14(d), "Project scoring and rating criteria," to mirror LIHC revisions in paragraphs 27. through 39. to correspond and coordinate, to the extent possible, the scoring for both Programs and to revise 2040.14(f), General, as described in paragraph 44. for the same purpose.

***Final rule as compared with last published rule:*** Nonsubstantive changes were made in sections 2040.2(u) and 2040.3(f)(5).

***Text of rule and any required statements and analyses may be obtained from:*** Arnon Adler, New York State Division of Housing and Community Renewal, 38-40 State Street, Albany, New York 12207, (518) 486-5044, email: aadler@nyshcr.org

***Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***

We are not submitting a revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement with this Notice of Adoption because all of the changes to the regulation as a result of public comment were clarifying in nature and did not impact the substance of these documents. As a result, the changes made do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

***Initial Review of Rule***

As a rule that requires a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

***Assessment of Public Comment***

Section 2040.2(f):

Comments:

One commenter recommended that the definition of "cost of real estate operations" be revised to include the cost of social services when funding or subsidies are not available from other governmental agencies to offset such costs.

Response:

DHCR believes there are multiple funding sources available to support the cost of social services. Adopting the proposed change in the definition could cause low-income residents of these projects to pay for social services through the imposition of higher rents, whether they require the services or not.

Section 2040.2(u)

Comments:

DHCR received three comments regarding DHCR's proposed definition of "supportive housing." One commenter suggested that the definition of "supporting housing" incorporate the recommendations of Governor Cuomo's Olmstead Cabinet. The Olmstead Cabinet recommended that supportive housing be defined as that which promotes integrated living environments for persons with disabilities instead of as a

specific percentage of the total units within a development. The other two commenters were concerned with the requirement that supportive housing projects be those that obtain capital financing: one proposed elimination of such requirement because it might promote higher project costs; the other suggested modifying the definition of "supportive housing" to expressly recognize long term debt service financing as capital financing.

Response:

DHCR has revised the definition to incorporate both pertinent Olmstead recommendations and the reference to long term debt service financing. While DHCR understands the concern about the potential for higher project costs, other provisions within these adopted regulations, that pertain to cost containment and effectiveness in threshold eligibility, scoring, and reduced builder fees, provide more direct and effective safeguards.

Section 2040.3(d)(3):

Comments:

One commenter suggested revising Section 2040.3(d)(3) to require that regulatory agreements be executed as of the date of the construction financing closing, which is consistent with current DHCR policy.

Response:

DHCR believes the existing QAP wording satisfactorily reflects current policy and allows for sufficient flexibility to avoid delays of closings while accommodating sponsors not prepared to execute regulatory agreements in that timeframe.

Section 2040.3(e):

Comments:

Two comments were received regarding the proposed threshold eligibility provisions. One recommended that fair housing provisions be made mandatory for Low-Income Housing Credit (LIHC) projects, on a statewide or NYC metropolitan area basis. The second suggested that all projects must reserve 15% of assisted units for persons with special needs, which is currently a scoring provision.

Response:

DHCR did not incorporate these recommendations in the adopted threshold eligibility provision because LIHC projects are already subject to federal and state fair housing laws/ regulations. In addition, a number of incentives are already offered for projects assisting persons with special needs, including additional funding (50% of units targeted to persons with special needs), a funding set-aside (30%) and scoring points (15%). These incentives allow developers flexibility to propose housing developments that meet specific community needs and markets.

Section 2040.3(e)(17):

Comments:

One commenter supported the proposed provision that allows the minimum number of years a project may be regulated to exceed 30 years. Another commenter was concerned about the possible negative impacts to mission-driven non-profits serving tenants with very low incomes and low rents: these agencies would be responsible for ensuring low income use for up to 50 years.

Response:

DHCR intends to retain the current wording of this threshold item. In recent application rounds, a substantial majority of applicants, including non-profits, have proposed 50 year regulatory terms, which previously provided sponsors with seven points. The points for this scoring criterion have been reallocated to new scoring provisions, which also advance other agency priorities and preferences.

Section 2040.3(e)(21):

Comments:

One commenter supported the proposed threshold eligibility provision that promotes cost containment. Another commenter recommended that project costs be evaluated in light of comparable projects, rather than based on one statewide standard. The commenter stated that the statewide standard might discourage investment in projects costing more to develop because of land or material costs, or the cost of substantial environmental mitigation.

Response:

DHCR believes using standards for comparable projects would create confusion, since there are many different types of projects. Rather, the high cost threshold standard, applicable to projects with costs above 130% of the median for all applications in a funding round, provides a sufficient degree of latitude to address project specifics. Moreover, where certain conditions are met, DHCR will also allow up to 10% of the tax credit awarded in the current round to be awarded to high cost projects that exceed the 130% threshold.

Section 2040.3(f)(1):

Comments:

One commenter supported the proposed changes to the "Community Impact/Revitalization" scoring provision of sub-clause (ii). A second commenter recommended that the scoring provision contained in sub-clause (iii) allow the points awardable to be applied for alternative projects, such as those supported by HUD Continuum of Care organizations, the New York/New York III state/city agreement, and priority projects of the Medicaid Redesign Team. The commenter asserted that the provision of such alternatives for projects is necessary because regional economic development councils are business orientated and may not press for the development of supportive housing or other proposed projects serving persons with special needs.

Response:

DHCR believes that regional economic development councils represent an important source of local involvement, are significantly attuned to local community needs, and support a wide variety of projects, including those that serve persons with special needs. Also, the regulations already provide multiple incentives for projects that serve persons with special needs, including provisions that allow the awarding of additional funding and scoring points.

Section 2040.3(f)(5):

Comments:

Commenters stated that it might be difficult and costly to provide evidence of sufficient market demand for fully accessible, adapted, move-in ready units for persons with physical and hearing/vision disabilities in the subject section's scoring criteria. One commenter also claimed that the requirements that supportive services be available for unit occupants and that pre-adapted units (among various unit types) be distributed equitably were inconsistent with NYC HPD's tenant lottery system.

Response:

DHCR remains committed to ensuring that a sufficient market exists for pre-adapted units and that these units will be equitably distributed. Based on the comments received, DHCR has eliminated the service requirement for tenants of pre-adapted units and revised wording to clarify that these units are fully accessible, adapted, and move-in ready. The means of demonstrating equitable unit distribution has also been expanded. Equitable distribution of units may now be demonstrated through evidence that the guidance and procedures of the service organization providing referrals have been applied, that pertinent federal and state laws have been applied, or by the submission of actual evidence of market demand for the pre-adapted units.

Section 2040.3(f)(9):

Comments:

A commenter disagreed with moving points awardable for projects supported through the implementation of significant local measures from the category of Community Impact/Revitalization to the Project Readiness category.

Response:

DHCR believes that points awardable for implementation measures fall within the Project Readiness criteria since such category represents an important factor in evaluating a developer's readiness to proceed to construction with local support.

Section 2040.3(f)(14):

Comments:

DHCR received three comments regarding the new scoring method that is intended to promote project cost effectiveness: one in approval and two proposing alternative formulations. The first commenter recommending an alternative formulation suggested that DHCR create different cost standards for different project categories, such as rehabilitation work, new construction, Davis Bacon wage rates, and environmental brownfield remediation. The second commenter stated DHCR should modify the scoring method to account for factors involved with supportive housing development for persons with special needs and their corresponding higher costs. The commenter suggested that DHCR should consider the following, which might impact project cost: the size of a project, the need for additional public and program space, the need for more expensive durable materials, and the payment of prevailing wage rates for construction.

Response:

While DHCR believes that promoting lower cost housing developments is an important policy goal, it is only one of a number of other policy goals, as demonstrated by the fact that the subject provision is only one of a number of scoring categories. For example, DHCR also offers incentives to benefit supportive housing, as well as higher cost developments, by making points awardable for the use of financial leveraging, the targeting of units for persons with special needs, having a positive community impact, bolstering revitalization efforts, and serving lower income households. This flexibility and scoring tradeoffs foster a variety of project preferences.

Section 2040.3(f)(15):

Comments:

A commenter expressed support for the new housing opportunity project scoring provision and suggested that DHCR amend the reference to high performing schools to include high performing charter schools and other alternatives to public schools.

Response:

DHCR uses public schools as the basis for assessing school perfor-

mance, because they are uniformly accessible to all community residents. In the adopted regulations, DHCR has added a reference to projects located outside of HUD-designated Qualified Census Tracts (QCT's) to provide additional clarity and to create consistency with scoring criteria intent, the request for proposals, application workshop guidance, and the questions and answers posted on the agency's website. DHCR also believes that this scoring option s serves as an important tool for assessing a housing opportunity project and is consistent with the judgment in Inclusive Communities Project v. Texas Dept. of Housing and Community Affairs, since non-QCT areas represent a key indicator of which locations offer residents more economic opportunities, transportation options, education benefits, and a higher quality of life, which the agency intends to promote.

Section 2040.3(f)(16):

Comments:

DHCR received five comments regarding the new scoring criteria used to promote the participation of Minority and Women Owned Business Enterprise (M/WBE) in project development teams. Comments were supportive of the provision and sought to extend its application further. Some recommended that DHCR raise the value of having M/WBE participation by either increasing the range of awardable points to five or 10 points, instead of the proposed two, or by deducting points when a project failed to meet proposed M/WBE participation goals. In addition, commenters suggested that the provision should require a minimum level of M/WBE participation in projects, including standalone (projects without other DHCR/HTFC funding) LIHC projects.

Response:

By introducing free-standing QAP scoring for M/WBE participation, DHCR is now able to promote M/WBE involvement in LIHC standalone projects. Because of multiple policy considerations, though, DHCR has decided to retain the two point target for M/WBE involvement. On the other hand, DHCR also promotes M/WBE participation outside of the scoring process. For example, under certain conditions, projects seeking LIHC financing (even on a standalone basis) will be required to execute M/WBE Utilization Plans from DHCR's Office of Fair Housing and Equal Opportunity, which establish M/WBE participation goals that are monitored and enforced. Therefore, DHCR will not assign more points to this provision at this time, but will assess sponsor performance and utilization of this incentive for future consideration.

Section 2040.3(g)(2)(i):

Comments:

Commenters were concerned that the proposed maximum cost standards/fees set forth for construction related items were not sufficient. One stated that the maximum was too low for NYC area projects. Another commenter recommended that DHCR allow project sponsors flexibility within allowable percentages for builder's profit, builder's overhead and general requirements instead of applying a fixed maximum allowable 14% aggregate fee.

Response:

DHCR believes the new allowable fee structure is consistent with cost containment goals, and industry, federal and state agency standards, including HUD and NYS Housing Finance Agency (DHCR's partnering agency). Moreover, numerous projects have already successfully utilized these standards. However, DHCR agrees flexibility within this structure will assist project sponsors and DHCR intends to assess implementation of the provision.

Section 2040.3(g)(6):

Comments:

A commenter suggested that DHCR should indicate what the specific amount of the supportive housing project set-aside should be, so that non-supportive housing projects do not compete against supportive housing projects.

Response:

In order to retain flexibility in offering set-asides and addressing other funding objectives, DHCR believes it necessary to continue setting forth set-aside amounts in its annual request for proposals instead of promulgating a fixed set-aside in its regulations.

# Department of Motor Vehicles

## REVISED RULE MAKING NO HEARING(S) SCHEDULED

### Proof of Satisfaction of Lien by Dealers

**I.D. No.** MTV-25-13-00005-RP

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following revised rule:

***Proposed Action:*** Amendment of section 20.17 of Title 15 NYCRR.

***Statutory authority:*** Vehicle and Traffic Law, sections 215(a), 2121(a) and (b)

***Subject:*** Proof of satisfaction of lien by dealers.

***Purpose:*** To establish procedures for dealers to demonstrate that they have satisfied a lien in order to obtain a clear title.

***Text of revised rule:*** Section 20.17 is amended to read as follows:

*(a)* Whenever a lien is satisfied, the lienholder shall immediately submit the notice of recorded lien [properly completed] *showing satisfaction thereof* to the title holder or his designee. The title holder or his designee may then submit such notice of recorded lien together with his certificate of title to the Title Bureau, Department of Motor Vehicles, [South Mall] *6 Empire State Plaza*, Albany, New York 12228. A new certificate of title *with the satisfied lien eliminated* will then be issued to the owner *or to any person authorized or designated by the owner,* [with the satisfied lien eliminated]and the satisfaction of lien will be noted in the records of the department.

*(b) Whenever a dealer registered under Section 415 of the Vehicle and Traffic Law receives a motor vehicle for the purpose of resale and arranges for the satisfaction of any lien on such vehicle, but the lienholder fails to immediately upon receipt of good funds submit the notice of recorded lien indicating satisfaction of such lien to the vehicle owner named on the title, or to any person authorized or designated by the owner, the dealer may request that the Commissioner issue either a duplicate title certificate without such lien included thereon or a title certificate without such lien included thereon. Such requests shall be mailed to the Commissioner at NYS Department of Motor Vehicles, Title Bureau, P.O. Box 2222, Albany, NY, 12220, or if sending via express mail service, to Title Bureau, Department of Motor Vehicles, 6 Empire State Plaza, Albany, NY 12228, Attention: Box 2222, and shall include the following:*

*(1) An application for a duplicate title certificate or for a title certificate properly completed by the owner of the motor vehicle, accompanied by the appropriate fee.*

*(2) If the dealer and owner desire the certificate to be mailed to the dealer, a written consent signed by the owner permitting the Commissioner to mail the duplicate title certificate or title certificate to the dealer at an address designated in such written consent.*

*(3) A copy of the dealer's written notice submitted to the lienholder that the dealer shall seek to arrange for the satisfaction and release of the lienholder's lien pursuant to Section 2121(b) of the Vehicle and Traffic Law, together with evidence, such as an overnight delivery confirmation or a certified mail return receipt, that such notice was received by the lienholder not less than two weeks prior to the dealer's application for a duplicate title certificate or title certificate. The dealer's notice shall be sent to the lienholder address currently on the title record maintained by the Department and shall be in 14-point type or larger and shall read as follows:*

*NOTICE OF DEALER'S REQUEST FOR RELEASE OF MOTOR VEHICLE LIEN*

*Motor Vehicle Information*

*Vehicle Identification Number (VIN): _____*

*Name of Last Owner (if known): _____*

*You are hereby notified that [Name of Dealer] (the "Dealer") has arranged for the full payment of a loan, retail installment contract, or other relevant instrument held by you on the above-referenced motor vehicle. To date, the Dealer has not received the required lien release paperwork or been advised that the owner or the owner's appointed designee has received it.*

*Please be advised that if you do not promptly issue such paperwork to the owner of the motor vehicle, the Dealer shall, two weeks from the date of your receipt of this notice, request that DMV issue a duplicate or new certificate of title for the above-referenced vehicle without your lien included thereon pursuant to Section 2121(b) of the New York Vehicle and Traffic Law. Such action by DMV will eliminate your perfected security interest in the vehicle.*

*If you have any questions about this notice, you should immediately contact the Dealer at [Mailing Address], [Telephone Number], [E-mail Address (optional)]. Any questions about the lien release process may be directed to Title Bureau, NYS Department of Motor Vehicles, 6 Empire State Plaza, Albany, New York 12228, by telephone at (518) 486-4714 or by email at dmv.sm.DealerLienSatisfaction@dmv.ny.gov.*

*(4) A copy of a written payoff statement: (i) from the lienholder to the dealer, on the lienholder's letterhead, or (ii) from a third-party provider otherwise authorized by the lienholder to issue payoff statements. The payoff statement shall contain, at a minimum, the name of the lienholder, the VIN of the vehicle associated with the lien to be satisfied, the amount required to satisfy such lien, and the date through which such amount will be effective. The payoff statement may also contain a per diem amount for the period after such effective date.*

*(5) Sufficient evidence that the dealer has tendered payment to the lienholder in the amount necessary to satisfy the lien as represented by the lienholder. Such evidence shall be in one of the following forms: (i) a transmission receipt for an interbank or electronic funds transfer that evidences the amount transferred and the VIN of the vehicle associated with the lien being satisfied; (ii) a copy of a bank or cashier's check delivered to the lienholder that evidences the amount transferred and the VIN of the vehicle associated with the lien being satisfied, together with evidence that the check has been delivered, such as an overnight delivery confirmation or a certified mail return receipt; or (iii) a written statement from the lienholder, on its letterhead, that evidences the VIN of the vehicle associated with the lien being satisfied and includes an acknowledgement that such lien has been satisfied in full.*

*(6) A signed statement from the dealer that it has not received any notice from the lienholder disputing the amount tendered pursuant to paragraph (5) of this subdivision as insufficient to satisfy the lien and that such dealer has fully complied with the provisions of this section.*

*The Commissioner shall promptly review the information submitted by the dealer, and, provided that the Commissioner finds that sufficient payment has been made to fully satisfy the lien, the Commissioner shall issue a duplicate title certificate without such lien included thereon or a title certificate without such lien included thereon within fifteen business days after receipt of all required information and fees.*

*(c) Pursuant to Section 2127 of the Vehicle and Traffic Law, any party subject to the provisions of subdivision (b) of this section may request a hearing before the Department of Motor Vehicles, if such party is aggrieved by an act or omission of the Commissioner.*

***Revised rule compared with proposed rule:*** Substantial revisions were made in sections 20.17(a), (b) and (c).

***Text of revised proposed rule and any required statements and analyses may be obtained from*** Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

***Data, views or arguments may be submitted to:*** Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

***Public comment will be received until:*** 30 days after publication of this notice.

***Revised Regulatory Impact Statement***

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL section 2121(a) requires the Commissioner of the Department of Motor Vehicles to provide a procedure for the release of a security interest in a motor vehicle. VTL section 2121(b) permits registered dealers to provide the Commissioner with proof that a lien on a vehicle has been satisfied, and authorizes the Commissioner to promulgate regulations setting forth the types of acceptable proof in order to issue a title that discloses no lien. VTL section 415(9)(d) authorizes the Commissioner to suspend or revoke a dealer's registration for failure to comply with the Commissioner's regulations or with any provision of the VTL that is applicable thereto. Thus, the Commissioner is authorized to take action against a dealer who makes a false or misleading statement when submitting proof of satisfaction of a lien, pursuant to 15 NYCRR 20.17.

2. Legislative objectives: VTL section 2121(b), as added by Chapter 493 of the Laws of 2012, authorizes registered automobile dealers to arrange for the satisfaction of a security interest in a vehicle the dealer receives for the purpose of resale, and provides that the Department shall issue a duplicate or original title without a lien thereon for such vehicles upon the receipt of certain evidence of lien satisfaction, along with a proper application and fee. This proposed rule is in accordance with the legislative objective by establishing those proofs of satisfaction of a lien that are acceptable to the Commissioner.

3. Needs and benefits: The Department of Motor Vehicles is required by law to issue a clear title when it is presented with a proper application, the requisite statutory fee and acceptable proof of lien satisfaction from the lender acknowledging that its security interest has been released. Occasionally, a lender may take several weeks to provide a written lien release to a vehicle owner after satisfaction of the lien. Chapter 493 of the Laws of 2012 was enacted to expedite the issuance of a no-lien title, in order to facilitate the resale of a motor vehicle that was traded to a dealer with a lien at the time of the trade. The new VTL section 2121(b) will expedite this process by offering dealers who arrange for the satisfaction of a lien a procedure to demonstrate to the Department that a clean title should be issued and, consequently, such clear title shall be issued more quickly. The amendments to Section 20.17 are necessary to apprise both lenders and dealers about those proofs of lien satisfaction that the Commissioner deems acceptable. The amendments to Section 78.32 makes clear that if a dealer abuses the process by submitting false or misleading information to the Commissioner regarding the satisfaction of a lien, the dealer could face the suspension or revocation of the dealer's license.

The Department received comments on the proposed rule from two major automobile dealer associations and two associations representing lienholders. In response to the public comments, and as described more fully in the Assessment of Public Comment, the Department has made eleven revisions to Section 20.17.

First, Section 20.17(a) is revised to provide that a new certificate of title with the satisfied lien eliminated shall be issued to the owner or "to any person authorized or designated by the owner." Second, the opening paragraph of Section 20.17(b) is revised to provide that a dealer may request a lien-free title certificate from the Commissioner if the lienholder fails to timely submit the notice of lien satisfaction to the owner of the vehicle "or to any person authorized or designated by the owner." Third, the opening paragraph of Section 20.17(b) is revised to provide a street address for the Department in case a dealer chooses to send a request for a lien-free title certificate via express mail. Fourth, Section 20.17(b)(3) is revised to provide that the dealer's notice to the lienholder seeking satisfaction and release of a lien shall be sent to the lienholder at "the lienholder address currently on the title record maintained by the Department."

Fifth, the form of the dealer's notice in Section 20.17(b)(3) is revised to expand the definition of loan to include a "retail installment contract, or other relevant instrument." Sixth, the form of the dealer's notice is also revised to clarify that the dealer is entitled to request lien-free title certificate because the Dealer has not received the required lien release paperwork "or been advised that the owner or the owner's appointed designee has received it." Seventh, the form of the dealer's notice is revised to provide a specific email address for the Department—in addition to a mailing address and telephone number—should a lienholder have any questions about the lien release process.

Eighth, Section 20.17(b)(4) is revised to provide that a written payoff statement may be accepted from "a third-party provider otherwise authorized by the lienholder to issue payoff statements" and is further revised to require that the payoff statement contain the name of the lienholder. Ninth, Section 20.17(b)(5) is revised to track the statutory language in VTL section 2121(b)(ii) and to provide that proof of delivery of the bank or cashier's check shall include overnight delivery confirmation or a certified mail return receipt. Tenth, Section 20.17(b)(6) is revised to provide that the signed dealer's statement confirming that it has not received notice from the lienholder disputing the lien must also state that such dealer has fully complied with the provisions of Section 20.17. Eleventh, a new subdivision (c) is added to Section 20.17 to provide that, pursuant to VTL section 2127, any party subject to the provisions of Section 20.17(b) may request a hearing before the Department if such party is aggrieved by an act or omission of the Commissioner.

4. Costs: There are no costs to the regulated parties other than the fee that registered dealers must pay for a duplicate title certificate. There are no costs to State agencies or local governments.

5. Local government mandates: None.

6. Paperwork: The process established by Section 20.17(b) will require dealers to provide written notice to a lienholder and to submit sufficient evidence that the dealer has tendered payment to the lienholder in an amount necessary to satisfy the lien on a vehicle.

7. Duplication: This proposal does not duplicate any law, regulation or procedure.

8. Alternatives: The Department consulted with two major automobile dealer associations and representatives of the automobile lending industry about the proposed rule. In addition, the Department received written comments from the American Financial Services Association (AFSA), the New York Bankers Association, which together represent many automobile lenders in New York State, and a joint letter from the Greater New York Automobile Dealers Association and the New York State Automobile Dealers Association. While the Department has incorporated many of the comments into the proposed rule as set forth in more detail in the Assessment of Public Comment, not all were deemed feasible.

The lenders expressed concern that notices sent by dealers may not be addressed to the appropriate department of a lending institution, which would potentially give a lender a short time frame in which to review records necessary to verify the status of a security interest. AFSA originally suggested that the Department create a database that the lenders could populate with the proper addresses to which dealers should send notices under the rule, but the Department lacks the resources to create such a database and believes that lenders are able to provide the proper notice address with the payoff statement. AFSA subsequently made an alternative suggestion that the dealers be required to send the notice to the lienholder's address on the title record maintained by the Department. The rule has been revised to incorporate this suggestion.

The dealer associations objected to recording the Vehicle Identification Number (VIN) on receipts for interbank or electronic funds transfers as part of the proof of payment. The Department strongly believes that

including the VIN on the receipt is necessary so that the Department may ensure that the payment is associated with the specific motor vehicle for which the lien is to be satisfied. The Department agrees, however, that the VIN may be handwritten on the receipt.

A no action alternative was not considered.

9. Federal standards: This rule does not exceed any minimum standards of the federal government.

10. Compliance schedule: Upon adoption of the regulation.

***Revised Regulatory Flexibility Analysis***

1. Effect of rule: This proposed regulation would affect only motor vehicle dealers who seek to arrange for the release of liens on motor vehicles they obtain in a trade, by demonstrating to the Commissioner that such dealer has satisfied the lien. There are approximately 10,000 car dealers in New York State. The proposed rule has no impact on local governments.

2. Compliance requirements: Those motor vehicle dealers who wish to arrange for the release of a motor vehicle lien would be required to provide the Commissioner with certain documents within a certain time period in accordance with the Commissioner's procedures. The documents would demonstrate that the dealer has satisfied the lien.

3. Professional services: This regulation would not require new professional services.

4. Compliance costs: The regulation would not impose any extra costs on the dealers who choose to participate in the process.

5. Economic and technological feasibility: This proposal adds no new economic or technological requirements on motor vehicle dealers.

6. Minimizing adverse impact: This proposal has no adverse impact on motor vehicle dealers. In fact, it will help such dealers to more expeditiously obtain clear titles to vehicles they take in trade. In addition, as detailed in the Regulatory Impact Statement, the Department consulted with two major dealer associations to obtain their input on the proposed rule and has revised the rule to address their concerns.

7. Small business and local government participation: As noted in the Regulatory Impact Statement, the Department consulted with representatives of the automobile lending industry and two major dealer associations about the proposed rule and incorporated their comments into the rule where feasible.

***Revised Rural Area Flexibility Analysis***

A Rural Area Flexibility Analysis is not attached because this rule does not necessitate revision to the previously published Rural Area Flexibility Analysis.

***Revised Job Impact Statement***

A Job Impact Statement is not attached because this rule does not necessitate revision to the previously published Job Impact Statement.

***Assessment of Public Comment***

The full Assessment of Public Comment is posted on the DMV's website at www.dmv.ny.gov.

The American Financial Services Association (AFSA) and the New York Bankers Association (NYBA) submitted extensive comments about the proposed rule.

Comment: AFSA suggests that the rule should require a standard form in prominent type alerting the lienholder that its security interest will be released unless the lienholder objects. The required notice in Section 20.17(b)(3) of the proposed rule should be incorporated in the standard form.

Response: The Department believes that a standardized form is unnecessary because Section 20.17(b)(3) of the proposed rule explicitly sets forth the language that must be used in the dealer's notice to the lienholder about the pending release of its lien. In addition, the rule provides that the notice shall be in 14-point type or larger, which should be sufficiently prominent to distinguish the notice from other correspondence.

Comment: AFSA suggests that the rule should require dealers to prove to the Department that (a) the proper form was used and (b) the address provided by the lienholder to the Commissioner was used (by return certified mail).

Response: Section 20.17(b)(3) provides that the dealer must submit a copy its notice to the lienholder that such dealer is seeking release of a lien and a clean title from the Department. In addition, the dealer must submit proof to the Department that the notice was received by the lienholder. The Department believes that these provisions will ensure that the lienholder will receive timely notice of the dealer's request to arrange for release of the lien.

Comment: AFSA suggests that the rule should require that payee information in electronic funds transfers and checks reflect the lienholder's information. Checks should show endorsement by the lienholder. AFSA and NYBA suggest that dealers should be required to submit the front and the back of checks as evidence that the check was processed and the funds were good.

Response: The Department is constrained by the statute regarding the evidence that demonstrates that the security interest has been satisfied by the dealer.

The Department has revised Section 20.17(b)(5) to give examples of evidence demonstrating that the dealer delivered payment to the lienholder.

Comment: AFSA suggests that the rule should ensure that the payoff amount matches the payoff amount quoted by the lienholder and was paid within the required date through which the amount was effective.

Response: The Department believes that the proposed rule adequately ensures that the payment made by the dealer matches the payoff amount quoted by the lienholder.

Comment: AFSA suggests that the rule should provide a mechanism by which the Department advises the lienholders of pending releases and gives the lienholders adequate time to dispute the release (e.g., 30 days). If the Department cannot give notice to the lienholders, AFSA and NYBA suggest that the rule should provide a mechanism and adequate time for a lienholder to dispute a lien release where it believes the underlying debt was not paid in full or that the lien should not otherwise be released.

Response: Vehicle and Traffic Law § 2121(b) does not contemplate a formal dispute mechanism. In fact, the statute specifically provides that the Department must issue the clean title certificate within 15 days of receiving proof of payoff by the dealer, which effectively precludes a dispute process. However, the rule and current law do provide some safeguards for the lienholders. Section 20.17(b)(3) provides that if the lienholder has any concerns about the dealer's intent to obtain a clean title certificate, the lienholder may contact the Department by mail, phone or by email. If evidence of non-compliance with the regulation is discovered, the Department has authority to take action against the dealer and, where appropriate, reinstate the lien. The Department can, upon receipt of credible evidence by the lienholder, put a stop on the title record so that a title certificate is not issued, or if the certificate has already been issued, that title is not transferred to another party. In addition, Vehicle and Traffic Law § 2127 authorizes a party aggrieved by an act or omission to act by the Commissioner to request a hearing before an Administrative Law Judge. Finally, Section 20.17(b)(6) has been revised to require the dealer to attest to the fact that such dealer has fully complied with the provisions of Section 20.17. If the dealer has not complied, the Department is authorized to take action against the dealer under Section 78.32(a), as amended, under the companion rulemaking proposal to this rulemaking.

Comment: AFSA and NYBA suggest that the Department should provide a required form for the dealers to complete to attest to the fact that they have not received any notice from the lienholder disputing the amount tendered to satisfy the lien in question.

Response: Section 20.17(b)(6) requires that the dealer submit a signed statement that it has not received any notice from the lienholder disputing the amount tendered. The rule has been revised to require the dealer to also attest to the fact that the dealer has fully complied with the provisions of Section 20.17.

Comment: AFSA suggests that the rule should provide a means by which the Department can notify lienholders of liens that have been released.

Response: The statute does not contemplate such a requirement. In addition, the Department does not have the resources to dedicate to this task.

Comment: AFSA and NYBA suggest that the Department should add language that explicitly provides that the Department will confirm the following prior to issuing a duplicate title eliminating the lienholders lien:

The address on the letter the dealer sent to the lienholder matches the address the lienholder provided on the payoff statement;

That there is evidence that the copy of the check provided was actually cashed (i.e., a copy of the back of the check should be provided);

That notice was received by the lienholder at least two weeks prior to submission to the Department by the dealer for release of lien.

Response: The rule, in large part, tracks the statutory language in Vehicle and Traffic Law § 2121(b) and addresses this comment. In addition, Section 20.17(b)(5) is revised to clarify that the dealer must submit evidence of delivery of a bank or cashier's check, such as overnight delivery confirmation or certified mail return receipt. It should be noted that the Department had considered requiring evidence that a check has been cashed, but representatives of the Greater New York Automobile Dealers Association and the New York State Automobile Dealers Association correctly pointed out that the statute requires only evidence that a check has been delivered to the lienholder, not that it has been cashed. The dealers associations also noted that the processing of a payment is wholly within the lienholder's control and not the dealer's.

Comment: AFSA suggests that the rule should provide a means by which a lien may be reinstated if improperly released and a dealer fails to indemnify the lienholder (provided there is no subsequent purchaser).

Response: If the Department receives evidence of fraud or other improper practices on the part of a dealer in relation to the lien release process, the Department may put a stop on the title, which will prevent issuance of a title certificate or transfer of the title if issuance has occurred. If

appropriate, after an investigation, the Department may reinstate the lien. In addition, if a hearing is held pursuant to Vehicle and Traffic Law § 2127, an Administrative Law Judge may order the reinstatement of a lien.

Comment: AFSA suggests that the rule should provide creditors with specific contact information at the Department for lienholder inquiries.

Response: If a lienholder wishes to dispute the lien release process, such lienholder should send its concerns to the contacts set forth in the form of dealer notice in Section 20.17(b)(3).

Comment: AFSA and NYBA suggest that the Department should develop a retraction process in the event that a dealer realizes it has made a mistake and wants to retract the request for lien release.

Response: If a dealer wishes to retract a lien release request, the dealer should send such request to the address in Section 20.17(b)(3) or contact the Title Bureau at the phone number listed in that paragraph.

Comment: NYBA recommends that the use of the term "loan" in Section 20.17(b)(3) be expanded to read "loan, retail installment contract, or other relevant instrument." This would accommodate financial institutions that are third party assignees of retail installment contracts.

Response: The rule has been revised to make the recommended change.

Comment: AFSA notes that many of its members have many addresses where correspondence may be sent. In its first set of comments, AFSA recommended that the Department establish a database of lienholders that lienholders could populate with the proper mailing address for required notices to be sent by the dealer seeking to release a lien. In a subsequent set of comments, AFSA suggests that dealer notices be sent to the lienholder's address on the title record maintained by the Department.

Response: AFSA's first suggestion is not technically feasible because the Department lacks the necessary resources to develop such a database. Moreover, the Department felt that the proposed rule, which required that the dealer's notice be sent to "an address provided by the lienholder," would ensure that lienholders would receive the notice at an appropriate address. AFSA's subsequent suggestion to require a dealer to use the lienholder's address on the title record maintained by the Department has the benefit of eliminating any uncertainty as to what address a dealer must use. The lienholder address on the title record may be readily obtained by a dealer and may be updated by a lienholder. The rule has been revised to make the recommended change.

The Greater New York Automobile Dealers Association and the New York State Automobile Dealers Association submitted joint comments.

Comment: The dealers associations express concerns about Section 20.17(b)(4), which requires dealers to produce a copy of a written payoff statement from the lienholder to the dealer, on the lienholder's letterhead. The dealers associations note that lienholders may advise dealers of the outstanding loan amount in several ways, including by email or phone or via third-party providers. The third-party providers access the loan records and then provide a statement to the dealer, upon which the dealer relies to make payment to the lienholder. Use of these various methods is standard operating procedure in the industry; a statement on a lender's letterhead is not.

Response: In light of the concerns raised by the dealers associations, Section 20.17(b)(4) is revised to allow submission of a payoff statement from a third-party provider.

Comment: After learning that the Department is considering revising the rule to allow submission of payoff statements by third-party providers, ASFA recommends that Section 20.17(b)(4) be clarified by requiring that such third-party providers be "authorized by the lienholder." If payoff statements from third-party providers may be accepted, AFSA recommends that the rule should also require that payoff statements contain the name of the lienholder.

Response: The rule has been revised to make AFSA's requested changes. Because the form or method of authorization may vary among lienholders and third-party providers, the revised rule refers to payoff statements issued by "third-party providers otherwise authorized by the lienholder to issue payoff statements." The word "otherwise" is intended to encompass all situations, including those where a lienholder makes loan information available to a third-party provider even though there may be no formal agreement between the lienholder and the third-party provider.

Comment: In a separate set of comments, the Greater New York Automobile Dealers Association recommends that (i) Section 20.17(a) be revised to provide that the new certificate of title with the satisfied lien eliminated could be issued to the motor vehicle owner or "to any person authorized or designated by the owner", and (ii) similar references to the "person authorized or designated by the owner" be added to the opening paragraph of Section 20.17(b) and Section 20.17(b)(3).

Response: The rule has been revised to make the recommended changes.

# Office of Parks, Recreation and Historic Preservation

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Deaccessioning of Works of Art, Historic Objects and Other Objects in the Custody of OPRHP**

**I.D. No.** PKR-47-13-00014-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** Repeal of Part 429; and addition of new Part 429 to Title 9 NYCRR.

***Statutory authority:*** Parks, Recreation and Historic Preservation Law, sections 3.09(8), 19.13 and 19.29

***Subject:*** Deaccessioning of works of art, historic objects and other objects in the custody of OPRHP.

***Purpose:*** To update OPRHP's deaccessioning rule.

***Text of proposed rule:*** 9 NYCRR Part 429 is repealed and a new Part 429 is adopted as follows:

*PART 429. DISPOSAL OF WORKS OF ART, HISTORIC OBJECTS OR OBJECTS*

*Section 429.1. Purpose.*

*The Office of Parks, Recreation and Historic Preservation may dispose of a work of art, historic object or other object that has been acquired by the State and is surplus to the needs of the office in accordance with the terms and conditions set forth in this Part.*

*Section 429.2.Determination of need.*

*Prior to the disposal of a work of art, historic object or object, the commissioner shall determine that it is surplus to the needs of the office based upon one or more of the following criteria:*

*(a) The work of art or historic object is not relevant to the purposes, functions or interpretive goals and policies of the office;*

*(b) The work of art or historic object is one of several examples of a particular type or class of art or historic object in the custody of the office, and these other examples adequately fulfill the interpretive goals and policies of the office;*

*(c) The work of art or historic object has deteriorated beyond usefulness or has become wholly or partially comprised of material that may be hazardous to the health or safety of staff or damaging to another work of art or historic object and does not merit extraordinary conservation efforts. "Deteriorated beyond usefulness" means the work of art or historic object lacks significance and is in poor physical condition or has suffered a substantial loss of integrity and has no intrinsic historic, artistic, scientific or cultural value; or*

*(d) The object is not a work of art or historic object because it does not possess any intrinsic historic, artistic, scientific or cultural value.*

*Section 429.3. Manner of disposition.*

*(a) Deteriorated or hazardous conditions. A work of art or historic object that has been determined to be surplus to the needs of the office in accordance with the provisions of subdivision c of section 429.2 of this Part may be destroyed and disposed of in an environmentally-responsible manner subject to industry standards. Two staff persons from the collection management unit in the division:*

*(1) shall document the work of art or historic object;*

*(2) make the findings under subdivision (c) of section 429.2;*

*(3) determine the work of art or historic object cannot be reconstituted;*

*(4) witness the destruction and disposal or the transfer for disposal; and*

*(5) make and keep on file sworn and notarized affidavits outlining the findings and process.*

*(b) A work of art, historic object or object that has been determined to be surplus to the needs of the office in accordance with the provisions of subdivisions a, b or d of section 429.2 of this Part may be disposed of in the following manner, after being properly documented in accordance with agency guidelines:*

*(1) it shall first be offered to the New York State Museum and if the State Museum fails to accept this offer within 30 days, it shall be offered to State agencies allowed to acquire, exhibit, preserve or interpret it; and if no State agency accepts this offer within 30 days it may be:*

*(i) donated to a public corporation;*

*(ii) donated to a not-for-profit corporation authorized to acquire, exhibit, preserve or interpret it;*

*(iii) sold for fair market value;*

*(iv) sold for less than fair market value provided the office makes a written justification on a case-by-case basis that it would be in the best interests of the State; or*

*(v) transferred to the Office of General Services with or without conditions for disposition either by public sale as provided in section 167 of State Finance Law or by private sale.*

*Section 429.4. Terms and conditions.*

*The commissioner may impose such terms or conditions upon the disposal of a work of art or historic object as the commissioner deems appropriate to encourage its conservation and preservation for the public benefit.*

*Section 429.5.Restrictions on disposition.*

*(a) A work of art or historic object shall not be disposed of under this Part within 10 years of its acquisition by the State.*

*(b) A work of art or historic object that is undocumented may be disposed of under this Part between 10 and 20 years after acquisition by the State provided the disposition is first approved by a court of competent jurisdiction. The office shall attempt to notify the previous owner or heirs or legal representatives, however, this requirement shall be deemed waived if the office is unsuccessful after making reasonable efforts to locate and notify such persons.*

*(c) A work of art or historic object that is undocumented may be disposed of under this Part without court approval 20 years or more after its acquisition by the State.*

*(e) If disposal of a documented work of art or historic object is inconsistent with the terms or conditions of the instrument by which title was conveyed to the State, it may, nevertheless, be disposed of under this Part provided the disposition is first approved by a court of competent jurisdiction. The office shall attempt to notify the previous owner or heirs or legal representatives, however, this requirement shall be deemed waived if the office is unsuccessful after making reasonable efforts to locate and notify such persons.*

*(f) An object that is undocumented or has deteriorated beyond usefulness or both may be disposed of under this Part at any time after its acquisition without court approval if it is determined to be surplus to the needs of the office under subdivisions c and d of section 429.2.*

*Section 429.6.Proceeds from Disposition.*

*Proceeds derived from the disposition of any property from the collections of the office shall be deposited into the state park infrastructure fund established pursuant to section ninety-seven-mm of the state finance law and shall be used only for the acquisition of collections or for the preservation, protection and care of the collections or both, including related capital projects.*

***Text of proposed rule and any required statements and analyses may be obtained from:*** Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, OPRHP, Albany, NY 12238 (for USPS mailing), 625 Broadway, Albany NY 12207 (for physical delivery) , (518) 486-2921, email: rule.making@parks.ny.gov

***Data, views or arguments may be submitted to:*** Same as above.

***Public comment will be received until:*** 45 days after publication of this notice.

***Regulatory Impact Statement***

This Regulatory Impact Statement (RIS) describes the Office of Parks, Recreation and Historic Preservation's (OPRHP or Agency) proposed rule on the transfer, disposition or deaccessioning (deaccessioning) of works or art, historic objects or objects in OPRHP's collections.

Statutory authority: Parks, Recreation and Historic Preservation Law (PRHPL or Parks Law), sections 3.09(8), 19.13, 19.29 authorize OPRHP to adopt regulations necessary to carry out the functions of the office and to deaccession works or art, historic objects or objects in OPRHP's collections.

Legislative objectives: Updating this rule confirms OPRHP's authority to deaccession items in its collections that:

- are no longer relevant to interpretation goals and policies of the agency;
- duplicate other items in the collections;
- have deteriorated beyond usefulness; or
- pose a health hazard to employees.

The rule also streamlines the notification process so that appropriate state agencies have the opportunity to take the item being deaccessioned, updates regulatory deaccessioning criteria to conform to statutory changes and reduces the Agency's substantial costs from continuing to care for or house these items.

Needs and benefits: OPRHP preserves, manages and develops its historic collections to educate New Yorkers about the State's historic resources through a system of state historic sites and historic parks. The Agency has an extensive collections protocol for managing works of art and historic objects. This protocol is derived from the Parks Law, the existing regulation and museum guidelines. Objects that have no relevance to OPRHP's collection and interpretation policies or duplicate other items or have deteriorated beyond reasonable usefulness may be deaccessioned under PRHPL § 19.29.

The controlling statute recognizes a widely accepted management practice shared by all institutions that maintain and use historic collections. Updating deaccessioning protocols as outlined in the proposed amendment will allow OPRHP to focus its limited resources on existing collections that are significant to its mission.

The existing deaccessioning rule at 9 NYCRR Part 429 has worked effectively for objects that were acquired with instruments of title, however, it fails to address the large number of items that have come into OPRHP's jurisdiction without documentation or those that are damaged beyond repair or that pose a health hazard for employees. The proposed rule formalizes the collections protocol for deaccessioning these items where continued retention is unnecessary, involves labor intensive conservation treatment and expensive warehousing costs.

OPRHP has managed these items for 20 years or longer. In most instances, previous owners and the means by which the items proposed for deaccessioning came into OPRHP's custody are unknown. Today, under OPRHP's existing guidelines, these items would not be accepted without ownership information. The proposed rule acknowledges that through its long term care and custody OPRHP has established jurisdiction over these items and that after 20 years it is appropriate to deaccession them.

Also, the proposed rule updates and supports OPRHP's current internal guidelines for deaccessioning. Requests for deaccessioning are submitted to its Collections Committee. There must be sufficient justification explaining why the object is either not historically significant to OPRHP or why it cannot be reasonably used for exhibit or interpretation. The Collections Committee must approve the deaccessioning by a majority vote at two meetings. Then, the Director of the Bureau of Historic Sites submits the requests to OPRHP Executive Staff.

There is a remote risk that an owner of an undocumented item could attempt to claim ownership after an item has been deaccessioned. That claim, however, would be subject to a rebuttable presumption that OPRHP had valid title because the item was not loaned to OPRHP and the Agency has enjoyed undisturbed custody for twenty years. (See, Maire C. Malaro, A Legal Primer on Managing Museum Collections, 391 (3rd. ed. 2012)). OPRHP retains the discretion to provide notice of the deaccessioning to the public in the State Register on a case-by-case basis.

Cost-benefit analysis: The continued retention of items eligible for deaccessioning has significant costs for OPRHP. The items require secure and adequate storage space with proper temperature and light controls and access for staff. And, retention of these items also generally requires OPRHP to undertake reasonable conservation efforts.

Local government mandates: The proposed rule does not affect local governments.

Paperwork: The proposed rule will require staff to prepare, document and file paperwork to comply with the deaccessioning procedure.

Duplication: None.

Alternatives: There are no viable alternatives to updating this rule to conform to the proper and reasonable collections management policy authorized by the Parks Law.

Federal standards: None.

Compliance schedule: The rule will take effect on the date the Notice of Adoption is published in the State register.

***Regulatory Flexibility Analysis***

The proposed rule at 9 NYCRR Part 429 updates the Office of Parks, Recreation and Historic Preservation's (OPRHP) process for deaccessioning works of art, historic objects and other objects. It involves OPRHP's collection management practices and, therefore, will not affect small businesses or local governments or recordkeeping requirements.

***Rural Area Flexibility Analysis***

The proposed rule at 9 NYCRR Part 429 updates the Office of Parks, Recreation and Historic Preservation's (OPRHP) process for deaccessioning works of art, historic objects and other objects. It involves OPRHP's collection management practices and, therefore, will not affect small businesses or local governments or recordkeeping requirements in rural areas.

***Job Impact Statement***

The proposed rule at 9 NYCRR 429 on deaccessioning work of art, historic objects or other objects involves the Office of Parks Recreation and Historic Preservation's collections management policies and would not affect jobs or employment opportunities.

# Public Service Commission

## NOTICE OF ADOPTION

**Approving the Internal Corporate Reorganization of IUSA**

**I.D. No.** PSC-12-12-00019-A
**Filing Date:** 2013-11-05
**Effective Date:** 2013-11-05

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

***Action taken:*** On 10/17/13, the PSC adopted an order approving a filing by Iberdrola USA, Inc. (IUSA) for a corporate reorganization as the upstream owner of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.

***Statutory authority:*** Public Service Law, sections 2(11), 5(1)(b) and 70

***Subject:*** Approving the internal corporate reorganization of IUSA.

***Purpose:*** To approve the internal corporate reorganization of IUSA.

***Substance of final rule:*** The Commission, on October 17, 2013, adopted an order approving a petition by Iberdrola USA, Inc. for an internal corporate reorganization as the upstream owner of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation, subject to the terms and conditions set forth in the order.

***Final rule as compared with last published rule:*** No changes.

***Text of rule may be obtained from:*** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

***Assessment of Public Comment***
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(12-M-0066SA1)

## NOTICE OF ADOPTION

**Rejecting Staff's Proposed Method for Allocating and Recovering Costs Associated with the Contingency Plan**

**I.D. No.** PSC-23-13-00006-A
**Filing Date:** 2013-11-04
**Effective Date:** 2013-11-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

***Action taken:*** On 10/17/13, the PSC adopted an order rejecting Staff's proposed method concerning the cost allocation and cost recovery for certain reliability contingency plans.

***Statutory authority:*** Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

***Subject:*** Rejecting Staff's proposed method for allocating and recovering costs associated with the contingency plan.

***Purpose:*** To reject Staff's proposed method for allocating and recovering costs associated with the contingency plan.

***Substance of final rule:*** The Commission, on October 17, 2013, adopted an order rejecting the proposed method for allocating and recovering costs, as proposed by the Department of Public Service Staff on June 4, 2013, and instead establishing alternative methods and mechanisms for allocating and recovering the costs associated with certain elements of the reliability contingency plans that address the potential retirement of the Indian Point Energy Center, subject to the terms and conditions set forth in the order.

***Final rule as compared with last published rule:*** No changes.

***Text of rule may be obtained from:*** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

***Assessment of Public Comment***
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(12-E-0503SA2)

## NOTICE OF ADOPTION

**Accepting the Projects for Inclusion in the Indian Point Energy**

**I.D. No.** PSC-27-13-00013-A
**Filing Date:** 2013-11-04
**Effective Date:** 2013-11-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

***Action taken:*** On 10/17/13, the PSC adopted an order accepting the proposed projects for the inclusion in the Indian Point Energy Center reliability contingency plans.

***Statutory authority:*** Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

***Subject:*** Accepting the projects for inclusion in the Indian Point Energy.

***Purpose:*** To accept the projects for inclusion in the Indian Point Energy.

***Substance of final rule:*** The Commission, on October 17, 2013, adopted an order accepting the proposed transmission projects for inclusion in the reliability contingency plans that address the potential retirement of the Indian Point Energy Center, subject to the terms and conditions set forth in the order.

***Final rule as compared with last published rule:*** No changes.

***Text of rule may be obtained from:*** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

***Assessment of Public Comment***
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(12-E-0503SA3)

## NOTICE OF ADOPTION

**Accepting the Proposed Energy Efficiency, Demand Reduction and Combined Heat and Power Projects**

**I.D. No.** PSC-29-13-00016-A
**Filing Date:** 2013-11-04
**Effective Date:** 2013-11-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

***Action taken:*** On 10/17/13, the PSC adopted an order accepting proposed plans for energy efficiency, demand reduction and combined heat and power.

***Statutory authority:*** Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

***Subject:*** Accepting the proposed energy efficiency, demand reduction and combined heat and power projects.

***Purpose:*** To accept the proposed energy efficiency, demand reduction and combined heat and power projects.

***Substance of final rule:*** The Commission, on October 17, 2013, adopted an order accepting the inclusion of energy efficiency, demand reduction, and combined heat and power projects proposed for the reliability contingency plans that address the potential retirement of the Indian Point Energy Center, subject to the terms and conditions set forth in the order.

***Final rule as compared with last published rule:*** No changes.

***Text of rule may be obtained from:*** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

***Assessment of Public Comment***
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-E-0503SA4)

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

**Reliability Support Services Agreement for Electric Service Reliability**

**I.D. No.** PSC-47-13-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** The Commission is considering an agreement filed by New York State Electric & Gas Corporation to procure Reliability Support Services from Cayuga Operating Company, LLC's generation facility units located in Lansing, New York, and related matters.

***Statutory authority:*** Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (6), (8), (9), (10), (11), (12), (12-a), (12-b), (16) and (20)

***Subject:*** Reliability Support Services Agreement for electric service reliability.

***Purpose:*** Consideration of a Reliability Support Services Agreement for electric service reliability.

***Substance of proposed rule:*** The Public Service Commission is considering the November 4, 2013 filing made by New York State Electric & Gas Corporation (NYSEG), seeking approval of an agreement to procure Reliability Support Services (RSS) from Cayuga Operating Company, LLC's generating facility located in Lansing, New York, and to recover the costs associated with the RSS agreement (November 4, 2013 Filing). NYSEG maintains that the RSS agreement is needed to ensure transmission system reliability for an interim period. The Commission is considering whether to adopt, modify, or reject, in whole or in part, the November 4, 2013 Filing, and related matters.

***Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact:*** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

***Data, views or arguments may be submitted to:*** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

***Public comment will be received until:*** 45 days after publication of this notice.

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-E-0400SP2)

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

**Petition for Submetering of Electricity**

**I.D. No.** PSC-47-13-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Stellar 83 Court LLC to submeter electricity at 83-87 Court Street, 15-17 Chenango Street, and 16 Commercial Alley, Binghamton, N.Y.

***Statutory authority:*** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

***Subject:*** Petition for submetering of electricity.

***Purpose:*** To consider the request of Stellar 83 Court LLC to submeter electricity at 83-87 Court Street, et al.

***Substance of proposed rule:*** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Stellar 83 Court LLC to submeter electricity at 83-87 Court Street, 15-17 Chenango Street, and 16 Commercial Alley, Binghamton, New York, located in the territory of New York State Electric & Gas Corporation.

***Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact:*** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

***Data, views or arguments may be submitted to:*** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

***Public comment will be received until:*** 45 days after publication of this notice.

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-E-0489SP1)

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

**Petition for Submetering of Electricity**

**I.D. No.** PSC-47-13-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Hegeman Avenue Housing L.P. to submeter electricity at 39 Hegeman Avenue, Brooklyn, New York.

***Statutory authority:*** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

***Subject:*** Petition for submetering of electricity.

***Purpose:*** To consider the request of Hegeman Avenue Housing L.P. to submeter electricity at 39 Hegeman Avenue, Brooklyn, N.Y.

***Substance of proposed rule:*** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Hegeman Avenue Housing L.P. to submeter electricity at 39 Hegeman Avenue, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

***Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact:*** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

***Data, views or arguments may be submitted to:*** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

***Public comment will be received until:*** 45 days after publication of this notice.

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-E-0543SP1)

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

**Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)**

**I.D. No.** PSC-47-13-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** The Public Service Commission is considering to approve, modify, or reject a petition from the Town of Bellmont, Franklin County, to waive 16 NYCRR Sections 894.1 through 894.4 pertaining to the franchising process.

***Statutory authority:*** Public Service Law, section 216(1)

***Subject:*** Waiver of 16 NYCRR Sections 894.1 through 894.4(b)(2).

***Purpose:*** To allow the Town of Bellmont, NY, to waive certain preliminary franchising procedures to expedite the franchising process.

***Substance of proposed rule:*** The Public Service Commission is considering whether to approve, modify, or reject the Petition of the Town of

Bellmont, Franklin County, to waive the requirements of 16 NYCRR, Sections 894.1 through 894.4 to expedite the franchising process.

***Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact:*** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

***Data, views or arguments may be submitted to:*** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

***Public comment will be received until:*** 45 days after publication of this notice.

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-V-0491SP1)

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

### Approval to Transfer of Stocks of Snow Lake Utilities Corporation

**I.D. No.** PSC-47-13-00011-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** The Commission is considering whether to approve, modify or reject in whole or in part, a petition filed by Snow Lake Utilities Corporation to transfer its stock to a new owner.

***Statutory authority:*** Public Service Law, sections 89-c(1), (10) and 89-h

***Subject:*** Approval to transfer of stocks of Snow Lake Utilities Corporation.

***Purpose:*** To allow Snow Lake Utilities Corporation to transfer its stock.

***Substance of proposed rule:*** On October 22, 2013, Snow Lake Utilities Corporation (Snow Lake or the company) filed a petition requesting the Public Service Commission's approval to transfer its stock to a new owner. Snow Lake provides unmetered water service to 42 customers in a development known as Snow Lake located on Route 28 in the Town of Indian Lake, Hamilton County. Public fire protection service is not provided. The Commission may approve or reject, in whole or in part, or modify the company's request.

***Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact:*** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

***Data, views or arguments may be submitted to:*** Kathleen Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

***Public comment will be received until:*** 45 days after publication of this notice.

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-W-0485SP1)

## PROPOSED RULE MAKING
## NO HEARING(S) SCHEDULED

### Conditioning, restricting or Prohibiting the Purchase of Services by NYSEG and RG&E from Certain Affiliates

**I.D. No.** PSC-47-13-00012-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed Action:*** The Commission is considering conditioning, restricting or prohibiting the purchase of services by New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) from certain affiliates.

***Statutory authority:*** Public Service Law, sections 5(1)(b), 64, 65(1), (2), (3), 66(1), (5), (9), (10) and 110(3)

***Subject:*** Conditioning, restricting or prohibiting the purchase of services by NYSEG and RG&E from certain affiliates.

***Purpose:*** Consideration of conditioning, restricting or prohibiting the purchase of services by NYSEG and RG&E from certain affiliates.

***Substance of proposed rule:*** The Public Service Commission is considering conditioning, restricting or prohibiting the purchase of services by New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) from certain affiliates, including Iberdrola Engineering Services, Inc. (IEP). As detailed in an Order Instituting Proceeding issued November 5, 2013 in Case 13-M-0483, the conditions, restrictions and prohibitions under consideration include revisions to the fully-loaded cost and other provisions of the Code of Conduct governing the relationships between NYSEG and RG&E and affiliates like IEP that are not a service company affiliates dedicated solely to serving utilities and instead participate in competitive markets; restrictions on the levels and amounts of purchases from IEP and similar affiliates; changes to contracts with IEP and similar affiliates; and, any other relief needed to protect NYSEG and RG&E ratepayers from unnecessary, excessive, unreasonably priced, or otherwise disadvantageous purchases of services from affiliates. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

***Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact:*** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

***Data, views or arguments may be submitted to:*** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

***Public comment will be received until:*** 45 days after publication of this notice.

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-M-0483SP1)